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Supreme Court, U.S.
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No._____

In The
Supreme Court of the United States

M.R.Mikkilineni,
Petitioner,

v.

Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; Derry Township Municipal Authority; Indiana County Commissioners; Lindsay McCabe & Lee; Zimmer Kunz; McDonald, Snyder and Lightcap; John Merlo; Bank of America; Gary Caruso; Commonwealth of Pennsylvania; United States
Respondents.

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Third Circuit

Petition for Writ of Certiorari

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Questions Presented

Question I:

Whether Third Cir. has decided an important federal question- in approval of a *void* sanction rule made by a lower court to abridge or modify *pro se* citizen's 1st Amend. right of access into the courts on his claims existing and new causes based on significant *new* evidence discovered, in conflict with the decisions of 8th & 6th Cir. and this Court- that should be settled by this Court.

Question II:

Whether Third Cir. has decided an important federal question- in approval of a lower court to deprive *pro se* citizen's life, liberty or property without due process under 5th (7th , 14th) Amend. and deny filing an independent action on his claims existing or lost, in conflict with the decisions of 6th & DC Cir. and this Court under FRCP 60(b)(6)- that should be settled by this Court.

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Opinion Below

On July 13, 2010, 3rd Cir. denied my petition for rehearing (App.26); on May 12, 2010, 3rd Cir. dismissed my appeal (App.1, 6, 11: not precedential) and approved lower court's rule to abridge my 1st Amend. right of access into the court, and deny 'rule 60(b)(6) motion' for leave to file complaint' on my existing claim and/or new causes based on significant *new* evidence discovered in 2008. See App.16-23 for lower court continued wrongful acts in the matter or over me since April 20, 2004 based on prior acts of 1992-2001.

Basis for Supreme Court Jurisdiction

3rd Cir. entered orders on May 12, 2010. I timely sought rehearing, and 3rd Cir. denied rehearing on July 13, 2010. I now seek review of those orders on a writ of certiorari, and this Court has jurisdiction to review the final-orders of 3rd Cir.

Constitutional and Statutory Provisions Involved

US Constitution *Amendment* I, V, VII, & XIV, and 28 USC @1346(b)(1). See App. 42

Statement of the Case

A. Summary of Facts

The case involves 3-separate contracts between my *dissolved* firm and 3-Owners of local governmental units in Pennsylvania- Derry Township Municipal Authority (Derry), Indiana County Transit Authority (Transit) & Indiana County Commissioners (Commissioners). Gibson-Thomas Engineering Co. Inc. (GTE) acted as an authorized agent of the Owners. The written contracts require *cause* to terminate giving me a *property* right. The Owners-GTE refused to correct premise defects in its land and plans when reported; then, retaliated using

or misusing its tangible property to increase costs of doing my work. They made willful *false*-reports to Pennsylvania Dept. of labor (Pa.Dol) on worker wage-rates being paid; as a result, Pa.Dol directed them to stop payments to me on the contracts- then, in *January 1991*, authorized with holding $26,737 (by Derry), $20,004 (by Transit) and $29,542 (by Commissioners) until investigation is completed.

Misusing Pa.Dol's letters, Owners-GTE stopped all payments to me for the work performed, made willful *false*-reports to Amwest Surety Insurance Co. (Amwest) and got my Surety credit terminated. In mid 1991, Derry and Transit terminated contracts, took-over my assets (money and materials) for its benefit, and drove me out of business. Their wrongful-acts continued *to this day* with refusal to release my assets including $26,737 (Derry), $20,004 (Transit) and $29,542 (Commissioners) despite Pa.Dol's *March 1993* authorization to refund after the investigation cleared me.

Work on Derry begun in *June* and ended in *December* 1990. Derry made one-payment in September for the materials on site; by *November*, it still owed $140,799 for work performed- so, I demanded payment. Instead, Owners-GTE agents *schemed* [per the meeting-*tapes* disclosed in *October 1997*] and made *false*-reports to Pa.Dol- kept my checks in a drawer to terminate the contracts, and use my assets for its benefit; the conspiracy between them and Pa.Dol agents worked with meeting of mind to '*stop payment*' and '*with hold*' my assets.

In *November 1990*, Derry-GTE agents made a report to Amwest that '*only "48%" of the contract is completed despite favorable weather and other condition*'- a *lie* per

subcontractor Ralph Smith's Affidavit of 1992- then, in *December* 1990, made another report to Amwest (without notice to me) that *"75%" of pipe is actually in the ground with 5 payments on hold'*. Also in *December* 1990, GTE agents using Pa.Dol letters *interfered* with my *making a contract* with Commissioners.

Meeting-*tapes* disclosed in *October 1997* confirm that they kept checks owed to me in a *drawer* to utilize for its benefit after handing-over my contract and assets to Amwest. In May 1992, GTE-Schmitt testified *"Yes, sir"* Derry is reimbursed by Amwest for the *re*-bid work (after my termination). Per GTE-Schmitt 75% of the pipe is in the ground (by mid *December* 1990) and *"the end product, as far as the pipe being installed in the ground,.. met specification..."*- but only *".. the.. accepted"* quantity is taken into count in deciding work to be done in *re*-bid. Thus, they not only kept *5*-payment checks in the *drawer*, but also did not include about *27%* of my work in those *5*-checks when they declared me in *default* in *January* 1991, and prohibited me from entering into the work site- in *May* 1991 terminated my contract. In reality Derry is in *default* from day-one: it gave me notice to proceed with the work, but did not acquire right-of-way to dig in private lands until after *January* 09, 1991 (3-months after expiry of my contract-time of *October* 12, 1990)- then, they refused to extend my contract time.

Under the *"scheme"* Owners-GTE refused to allow me finish my work on Derry, Transit & Commissioner contracts, took control of my assets (money and material on site), and utilized for its own benefit. Derry and Transit terminated my contracts under the pretext-poor *'performance'*- a *lie* per Schmitt's own testimony that my work is in *'good progress'*. Later, GTE-Schmitt

& Derry-Pohland, Yarchak testified: it is better for them to terminate my contract than negotiate because I am asking for payments and change-orders for extra work performed. Commissioners refused to make final payment, took-over the completed facility for use, and utilized my assets for its benefit until *March* 2010.

The 3-contracts with Owners contained an arbitration provision: '*all disputes* or *breach shall be decided by arbitration in accordance with rules of AAA, the locale for any hearing shall be in Latrobe,* Westmoreland County, Pa., *and, the award by an arbitrator shall be final.*' Accordingly, in *1991-2, within the time,* I filed petitions to arbitrate claims.

Derry *denied* existence of an arbitration provision in the contract, and refused to arbitrate. Upon my petition to compel arbitration, Derry, by unanimous vote, resisted my petition, and in *May 1993* secured an order in the state-court to stop arbitration. Derry-GTE did *not rescind* that order to this date although- in *September* 1997, Pohland testified: "*I think this one has the newer version of the arbitration clause*"; and in *October* 1997, Schmitt testified: "*I believe we had an arbitration clause*".

Transit agreed to arbitrate under the provisions of the contract. AAA appointed arbitrator and hearings held in Westmoreland County, Pa. Arbitrator *denied* a hearing I requested to present relevant-evidence, and entered an *unconscionable* award in *April* 1992. At a hearing on Commissioners contract, Schmitt testified- the '*Transit-Arbitrator*' and '*Schmitt, Gera*' had *prior employer-employee* relationship for a number of years. On *May 06,* 1992, I filed a timely initial petition to *vacate* that award- because arbitrator *denied* a hearing- in the court of Westmoreland County, Pa. (No.4078 of 1992)

where jurisdiction-venue is *proper*- later, I amended my petition with *new* evidence on '*employer-employee*' relationship, a *misconduct* under 42 Pa.CS @ 7341. On *May 08*, 1992, after receiving my petition, Transit-Merlo filed its own petition to confirm that award by the court in Indiana County, Pa. (No.835 CD 1992), where jurisdiction-venue did not exist; and failed to effectuate service of that petition (upon the *dissolved* firm). In *October* 1992, Transit secured a *default*-order from the court in Indiana confirming award- which order is *void*. See *Mikkilineni*, 986 A.2d 185 (Dec. 2009, Commlth. Ccurt of Pa.)- venue is proper in Westmoreland County, not in Indiana County, Pa.

Transit-GTE (Merlo, Snyder) acting under color of law, secured state court orders with willful-*deceit*: a *ruling* in *September* 1992 that Westmoreland County court *lacked* jurisdiction-venue; and, in *September* 1993 another order with a *lie* as to the timing of Transit-Merlo's petition in Indiana County court. In *November* 1993, Transit-Merlo filed a false *Sworn*-statement in USDC/WD Pa. (No.93-1653) stating he "*on or about May 04, 1992, filed a petition with the court of.. Indiana County to confirm the award..*" and got Ziegler dismiss my complaint. The record shows Merlo filed that petition on *May 08*, 1992.

In my 2-decades of experience with lawyers & judges, as officers of the court, I had to face this kind of *ethical* conduct as if deeply embedded into the court-culture.

Commissioners agreed to arbitrate under the provision in the contract. AAA appointed arbitrator and hearing held in Westmorland County, Pa. In *August* 1993, arbitrator entered an award in favor of me for $103,199. Commissioners refused to release that award until *March* 2010- at which time conceding that I am the

successor-in-interest to the assets of my *dissolved* firm per Commonwealth court ruling decided to release the award- but it did *not refund* $29,542 held since *January* 1991.

B. Course of Proceedings Below

After terminating my Surety credit to bid for new contracts- in *July* 1991, for no reason, Amwest made a demand to cash my bank CD of $56,104- I assigned to obtain that letter-credit to bid. In *October* 1991, I filed an *initial* case for breach of contract against Amwest, removed into USDC/WD Pa. (No.91-1815). Amwest cashed my CD in *November* 1991 after securing Ralph Smith's claim-letter on *8/02/1991* for $34,633 using Derry-GTE (Schmitt, Yarchak) as agents.

On *April 23*, 1992, Ralph Smith testified: "*late October 1990* (Schmitt) *encouraged subcontractor quit..* (to get) *paid in full...Unknown to* (MRM), *a day before the 3/1/91* (8/1/91?) *meeting* (with Amwest), (Schmitt) *directed subcontractor to immediately present an invoice... or would not be paid; subcontractor immediately prepared an invoice... hastily*"

On *October 13*, 1997, Schmitt testified: "*I can't tell you the exact time frame of Mr.Smith's questioning relative to payment. My answer to Mr.Smith... was simply, you have to notify the Bonding Co.*"

Amwest denied Ralph Smith's claim on *November 26*, 1991 after cashing my CD. On *April 16*, 1992, McCabe prepared, filed an Affidavit of Amwest-Hardy, and secured a summary judgment (No.91-1815) using Ralph Smith's claim- expired on *12/27/91* under *1-year* limitation period in the payment bond- last date of work on my contract being *12/27/90*. McCabe knew or should

have known that. Using that *false*-Affidavit, judge Block *dismissed* a major portion of my claim in a summary-order- left a minor-issue ($37,500) for trial. In *May* 1992, Jury awarded that amount to me. Thus, Amwest-McCabe *prevented* me from *presenting evidence* on rest of my claim- a large sum that includes *27%* of my work not counted for payment, and the *5*-checks owed but kept in a *drawer* and later used to get extra work done in *re*-bid.

Significant *new* evidence discovered in 1994-7 (No.92-1489 & 95-1103) show conspiracy and meeting of mind between Schmitt, Yarchak and Hardy in securing a claim-letter from Ralph Smith in *August* 1991 to justify taking-over my bank CD, and later enable McCabe secure the summary-order from judge Block. My legal-counsel left because of mistakes at the trial in *May* 1992.

Then, a new legal-counsel filed my *first* suit on *June 23*, 1992, in USDC/WD Pa. at No.92-1489 (naming me & my *defunct* firm as plaintiffs) *within the time* under 15 Pa.CS 1979(a), against:

> *Derry for breach of contract; GTE- its agents Schmitt, Gera, Derry agent Taylor, and Transit agents Elkin, Blair for claim* @1981, 1983; and *GTE agents Schmitt, Gera, Derry agent Taylor, and Transit agents Elkin, Blair for* tortious *interference* and @1985.

The suit filed based on the evidence discovered in *1992* at No.91-1815, and at the arbitration hearings. After representing me for 3-years, the legal-counsel quit when *I ran out of money* and the defendants would not allow discovery to complete. In *March* 1995, Ziegler *dismissed* my suit for *lack of legal-counsel* as defendants wanted my *defunct* firm hire a legal-counsel.

I did not know what took place in judge Block's chamber (or side bar) in *May* 1992 (No.91-1815).

I became aware of that from the trial-transcript made available by court reporter around *July 22,* 1992; and discovered *fraud* upon the court by Amwest-McCabe, who *misrepresented* relevant evidence to the judge in the chamber and at the side bar. Such wrongful-acts *prevented* me from *presenting evidence* to the Jury on a major portion of my claim.

Finding evidence of *fraud* upon the court*1 (App.46)- I filed *'bills* of review' on *09/09/1993-* judge Block did not act on it. In *January* 1994, I filed a suit at No.94-78, within 2-years of the *fraud* upon the court in *May* 1992 and saved the claim against-

. *Derry- its agent Pohland, GTE- its agent Schmitt, and Amwest- its agent McCabe for tort-* fraud and *deprivation of liberty or property without due process under* 14th Amend.

Judge Block dismissed it for *lack* of complete diversity. In *March* 1994, I *re*-filed that suit at No.94-354, *within the time* against-

. *Derry- its agents Yarchak, Pohland, GTE- its agent Schmitt, and Amwest- its agents Hardy, McCabe for tort-* interference, fraud and *deprivation of liberty or property without due process under* 14th Amend.

In *November* 1994, Ziegler dismissed the suit for *lack of legal-counsel* as defendants wanted my *defunct* firm hire a legal-counsel.

In *October 1993, within the time* I filed a suit at No.93-1653 based on the wrongful-acts at Transit arbitration in *April* 1992, and later in the state courts- and saved claim against-

. *Transit for breach of contract; Transit agents Blair, Elkin, Merlo, and GTE- its agent Schmitt & the state-*

agents for fraud and *deprivation of liberty or property without due process under* 14th Amend.

In *November* 1994, Ziegler dismissed the suit for lack of *legal-counsel* as defendants wanted my *defunct* firm hire a legal-counsel.

The causes of action of my *defunct* firm, MRM Engineers, PC (*dissolved* on 2/20/1996) at No.91-1815, 94-78 & 94-354 (Derry), No.92-1489 (Derry, Transit & Commissioners) and No.93-1653 (Transit)- filed *within the time*- and existing under 15 Pa.CS @ 1979(a), became my property on 2/20/1996, as the *successor-in-interest* to the *dissolved* firm. So, as the real party in interest under FRCP 17(a), in *March* 1996, I *re*-filed my *claims-existing* in my own name:

(1) Suit at No.96-526, against:

. *Derry for breach of contract* and @1983; *Cranberry Township Water & Sewer* @1983; *GTE- its agents Schmitt, Gera and KLH Engineers- its agent Soster for claims* @1981, 1983 & 1985; *and GTE- its agents Schmitt, Gera, Mott, Vedas, Derry agent Taylor for tort*-fraud (based on existing and significant *new* evidence discovered).

(2) Suit at No.96-527 (related to No.93-1653) against:

. *Transit for breach of contract* and @1983; *Transit agents Blair, Elkin, Merlo, and GTE- its agent Schmitt, & state-agents for tort*-fraud, and *deprivation of liberty or property without due process under* 14th Amend.

In *May 1996*, Ziegler dismissed both suits for *lack of legal-counsel* as defendants wanted my *dissolved* firm hire a legal-counsel.

In *December* 1997, I had to *re*-file a suit at No.97-2311 (related to No.96-526) based on significant *new* evidence

discovered in *September* 1997 on GTE-KLH agents' interference in making contract with Cranberry TWP (in 1995)- and saved my cause of action against:

. *KLH* Engineers- *its agent Soster, GTE- its agent Gera for claims under* @1983, 1985.

In *August* 1998, Ziegler dismissed the suit for *lack of legal-counsel* as defendants wanted my *dissolved* firm hire a legal-counsel.

Upon dismissal of the above suits, in *February* 1999, I *re*-filed a suit at No.99-224, against:

. *GTE agent Gera for claim* @1981; *Derry- its agents Pohland, Yarchak, GTE agent Gera and Amwest for claim* @1983; *Derry agents Pohland, Yarchak, GTE- its agent Gera and Amwest for claims* @1985; *Derry agents Pohland, Yarchak, GTE agent Gera and Amwest for claims* tortious *interference; Derry agents Pohland, Yarchak, GTE- its agents Gera, Schmitt for tort*-fraud; and *GTE, Schmitt, Gera, Amwest for claim under* civil Rico @1961.

In *December* 1999, Ziegler dismissed the suit for *lack of legal-counsel* and/or *misusing* the 2-year statute of limitations period counting *original* filing as *February* 1999- because defendants wanted a dismissal.

3rd Cir. simply affirmed each and every dismissal and *refused* to review my appeals on merits.

Upon dismissal of the suits at Nos.92-1489, 94-78 & 94-354, in *July* 1995, a legal counsel (on contingency fee basis) *re*-filed a suit at No.95-1103 (naming me & my *defunct* firm as plaintiffs), against:

. *Amwest for breach of contract; Amwest- its agents Hardy, McCabe, Derry- its agents Yarchak, Pohland and GTE-*

its agent Schmitt for claims @1981, 1983; *all individuals- Hardy, McCabe, Yarchak, Pohland and Schmitt for claims* @1985 & *tortious interference; GTE for tortious interference*; and *Amwest, Hardy for tort-* fraud..

At defendants' request, in *June* 1996, 4-months after my firm *dissolved*, Ziegler *first* dismissed *me* as a party in the suit, then dismissed causes that became my property under state law*2.

In *March* 1998, more than *2-years* after my firm *dissolved*, my motion to join in the suit as an interested-party under FRCP 19(a)(1)(B) or intervene under FRCP 24(a)(2) is *denied*. In *December* 1999, Ziegler dismissed*3 rest of causes that became my property under state law.

Ziegler *misused* the *2-year* statute of limitations period counting *original* filing date as *July* 1995 or *twisting* the facts-law. I originally filed all these causes of action *within the time* (at Nos.91-1815, 94-78 & 94-354, 92-1489) and saved as claims existing under 15 Pa.CS @1979(a).

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*2 Mt.Carmel Co. v. Hanna, 89 A.2d 508 (Pa. SC); Palazzolo v. R.I, 121 S.Ct. 2448

Ziegler said-

" *plaintiffs have not demonstrated that termination of a contract.. is a property right protected by* @1983";

" *allegations of conspiracy must address the period, object and actions.. complaint alleges no specific facts.. for claim* @1985";

Breach of contract claim against Amwest "*is merely a reargument of the claim raised and lost in 91-1815*";

" *by* May 1, 1991, *plaintiffs had knowledge that contracts were being interfered with. Thus, plaintiffs would have needed to*

(continued next page)

initiate an action prior to May 1, 1993 *in order for the action to be timely for tortious interference*";

" *plaintiffs were aware on* February 11, 1992 *of the fraud which allegedly occurred during the trial of* 91-1815. *Thus, in order for the fraud claim to be raised in a timely manner, plaintiff s had to initiate an action before* February 11, 1994"

*3 Ziegler said-

"..*black fucking nigger (and such comments) occurred prior to the termination of the contract* (on May 1, 1991) *they are not actionable under* @1981 *because they occurred prior to November 21, 1991.. plaintiff has not provided authority that* misrepresentation *made in the course of the litigation of* No.91-1815 *represents an interference with MRM's right to enforce its contract within the meaning of* @1981.. *With respect to Derry which led to the state court ordering a stay (of arbitration) in* May 1993, *this action was not brought until* July 17, 1995, *more than* 2-years *after alleged interference with the right to enforce its contract.. Derry denied the existence of an arbitration provision in July 1991. This action, filed in* July 1995, is untimely."

".. *even if plaintiff demonstrated that the contract could be terminated only for a cause and that it was therefore a protected property right for purposes of* @1983, *the constitutional violation actionable under* @1983 *is not complete when deprivation occurs- it is not complete unless and* until the state fails *to provide* due process.. *a claim under* @1983 *would be* barred *by the running of the* 2-year *statute of limitations, because the contract was terminated on* May 1, 1991"

" *Because the claim under* @1985 *relates* only to Mikkilineni *individually and* he has been dismissed *as a plaintiff to this action.. it is* time barred.."

" *Tortious Interference claim is* barred *by the running of the* statute of limitations"

Prior dismissal for *lack of legal counsel* is not on the merits. So, I tried to clarify the facts- but Ziegler would

not allow me amend as his plan is to *twist* the facts. In *July* 2000 Ziegler said-

> *".. record reflects that the proposed amended complaint is essentially identical to the proposed submitted on* November 30, 1998.. *plaintiff offered no reason why this should be accepted when the previously submitted one was not... By filing a motion to amend the complaint 7-months after a similar motion to amend had been* denied *Ms.Mikkilineni was causing unnecessary delay... Therefore the motion for* sanctions (is) granted"

Ziegler *denied* my requests to clarify facts, *twisted* the facts, and *sanctioned* my only legal-counsel to *scare* her away- because she proposed to add a civil RICO claim *timely* against GTE, Schmitt, Gera.

Because the claims existing became my property on 2/20/1996 under the operation of state law, without me as a party my *dissolved* firm has no cause of action to dismiss in *June* 1996 or any time later by any court. My timely appeal (at No.00-2388) on Ziegler's dismissal of *me* as a party, and my claims- 3rd Cir. (Scirica..) in an *unreported not precedential* opinion of *April* 2001, *refused to review* on the merits, and affirmed dismissal (App.33)-

> " *our* clerk *of the court dismissed the appeal as to MRM Engineers.. because* no attorney had entered *an appearance on behalf of the* corporation... *and we agree* Mikkilineni was not the real party *in interest...*"

So, in *June* 2002, I *re*-filed a suit asserting my existing claims (No.02-1118) in USDC/DC- being a resident of Washington, DC. At defendants' request, Urbina entered a transfer order (see App.23)-

> "*because the WD of Pa. has already* ruled multiple *times on similar claims filed by this* pro se *plaintiff,*

transferring this action to that district court best serves the interests of justice" (as if he knows justice...)

Thus, Urbina transferred my suit without a hearing on the issue I raised- *deprivation of constitutional rights at* USDC/WD Pa. for over a *decade* by that time.

I did not seek jurisdiction in USDC/WD Pa. *after 1999*. On *4/16/2004*, I filed a motion (at No.04-491) objecting to jurisdiction (despite *diversity* of citizenship- 28 USC @1332) and asked the court to *stay the proceedings until Congress makes the law*- because that court had declared me a "*non-party*" in the suits I filed during *1992-9*.

On 4/20/2004, Schwab (USDC/WD Pa.) claimed *lack of subject matter jurisdiction* and said (App.23)-

> "case *presents.. forclosed by prior decisions.., the court will sua sponte dismiss this case, with prejudice* "- because I asked "*for a writ of mandamus to direct the USAG to investigate alleged civil-rights violations*" by defendants and *members of federal and Pa. courts..*" under color of law- declared I am a "*vexatious frequent filer.. has filed,* pro se, *over* 100 *cases...*"

Schwab's claim is a *lie*- none of my claims existing under 15 Pa.CS @1979(a) are "*foreclosed by prior decisions* or *vexatious..*" See 3rd Cir. ruling in my related appeal (App.37) (*action filed within the.. period..* (under state law) *by a dissolved corporation.. continue to survive.. beyond the period as to any timely filed action until all judgments have been executed*). My causes of action are substantial and meritorious*4-5 (App.48, 52) because of-

(i) *fraud* in *May* 1992 (at No.91-1815);

(ii) *denial* of my joining as a party under FRCP 19(a)(1)(B) & 24(a)(2) in *1992-9* despite *my liberty or property interest* in the suit; and

(iii) *dismissal* of claims*2-3 after *2/20/1996* under the pretext- the *dissolved* firm survives (forever) under 15 Pa.CS @1978(a), therefore a *legal-counsel is required* and/or the claim is *untimely* under *2-year* limitations period counting *original* filing as *July* 1995.

Schwab's finding that this "*frequent filer*" filed "*over 100-cases throughout the land*" is another *lie*. 3rd Cir.'s count shows *9-cases* as of *June* 2001 (App.33 & 37)- not counting *re*-filings, it is only *5-cases*. As regards to Schwab's "*lexis quickly reveals*"- it reveals *4 re*-filings in USDC/DC and the rest appeals, cites or not my cases- 50% of appeals are on rule 60(b) motion denials, and the rest 50% include appeals plus rehearing *en banc*.

Even taking suit No.04-491 as an example: after *re*-filing 11-times (on 3 projects+1 lost contract) in *2-decades*, it still remains *un*resolved- because, I am unable to get access into a court to present evidence on my claims. Therefore, the issue is not *frequent filer* or *over 100 cases*- it is the *abuse* under a *scheme* of gang-*rule*. Ziegler, Schwab & 3rd Cir. *abridged* my right of access into the courts to *prevent* me from *presenting* evidence on the merits, and *shielded* those who committed *fraud* upon the court... Schwab's order that the clerk of court- "*not accept any* pro se *complaint unless he.. obtained a court order permitting him to file..*"- is the proof of a *scheme*.

Schwab also finds that my "*complaint* (No.04-491) *makes clear the claims raised.., are... identical to the... claims previously litigated* unsuccessfully"

Ziegler & 3rd Cir. never allowed my claims to be litigated; Schwab sounds correct that I only asserted my claims existing or *un*resolved to this date*5 (App.52).

On *5/19/2004*, within *28 days* after Schwab's *sua sponte* dismissal of *4/20/2004*, I filed a *response* to that order

(being *ill* with *leukemia* and in bed since Sept. 2003). Construing as a rule 60(b) motion, I asked the court to reconsider that order (because finding *"lack of subject matter jurisdiction"* is a *fraud* despite *"diversity"* jurisdiction on its face with my claims existing). Schwab did not decide on my request- so, notice of appeal can wait under FRAP 4(a)(4)(A)& App.41

In *October* 2001, GTE- Schmitt, Snyder commenced a claim against me and my *dissolved* firm in the court of Westmoreland County, Pa., (No.6137 of 2001). They made claims for attorney fees alleging I and my *dissolved* firm filed suit(s) in the federal court without a *probable* cause.

State court *subpoenaed* Schwab (and others) to appear and testify as a *private citizen*- whether I, or my firm, had *probable* cause for filing claim against GTE in USDC/WD Pa. Schwab (and others) refused; and got the subpoena *quashed* making false statement that it did not contain *'seal of the court'*. Later, Schwab made another false-statement in my appeal (at No.1358 CD 2006) and obtained *immunity* from Commonwealth Court of Pa. (App.56)

In *April* 2009, I contacted Schwab's clerk because I did not hear on my post-decision *response*. Per clerk's suggestion, on *4/09/2009*, I filed a rule 60(b)(6) motion to *strike* Schwab's order of 4/20/2004, *re-open* the case at No.04-491, and for *recusal* from this matter due to his *false* statements in the state courts. On *4/13/2009*, Schwab *denied* my motion without an opinion and failed to *recuse* (App.16). I filed a *notice* of appeal on *5/11/2009*.

On *5/11/2009*, I, also, filed a request to reconsider my 60(b) motion, and allow joining *new*-defendants and *new*-causes based on significant *new* evidence discovered

in the state court suit. On *6/05/2009*, Schwab *denied* (App.17) using GTE- Snyder's "*anticipated opposition*" filed on *6/08/2009*- that my *new*-cause is *frivolous* and *unrelated* to No.04-491. No requirement to file an amended notice of appeal- FRAP 4(a)(4)(B)(i)*6.

On *6/23/2009*, I filed "*Application for leave to file complaint with new causes of action*" and described the significant *new* evidence discovered (App.56), including GTE- Snyder *fraud* upon the state court. On *6/26/2009*, Schwab *denied* (App.19) it and said- "*plaintiff's latest attempt to harass defendants and to circumvent this court's previous rulings must be denied.*" On *7/08/2009*, I filed a notice of appeal.

On *7/16/2009*, I filed a suit at No.09-1320, in USDC/DC, to save my causes of action. Chief judge Lamberth saw the merit (App.28) and allowed me to file the same complaint Schwab refused to file- and knew of Urbina's prior order that prohibited me from filing as Schwab (Gilmore & Hughes) did. However, chief judge *sua sponte* ordered transfer of the suit into USDC/WD Pa.- because I originally attempted to commence in that venue. On *8/05/2009*, case file arrived into USDC/WD Pa. at No.09-1026; and Clerk issued summons on *8/10/2009* (App.20). On *8/17/2009*, Schwab grabbed the *new* case and *dismissed* it *sua sponte* (App.21) before effecting service. He knew I filed a motion to *re*-categorize the case and assign to a *fair*-judge: recognizing his own *misconduct*, Schwab took support

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*6 If a party files a notice of appeal after the court.. enters an order- but before it disposes of any motion listed in rule 4(a)(4)(A)- the notice becomes effective to.. order in whole..

from judge Lamberth's order by *twisting* it*7.

On *8/27/2009*, I filed a *notice* of appeal. That brings us to the present stage, where, on *May 12*, and *July 13, 2010*, 3rd Cir. (Sloviter..) affirmed Schwab's orders.

Ziegler, Schwab and the 3rd Cir. judges *abused* power under a *scheme* for 2-decades: abridged my 1st Amend. right of access into the courts to prevent me from presenting evidence, and shielded those who did the *fraud* upon the courts- *lied* not only in my case or appeal, but also in the state courts when subpoenaed to testify as a private citizen. See my complaint of *misconduct* at JC No.03-10-90041-3.

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*7 Schwab says (App.21): I *"filed an application to.. IFP.. Lamberth granted.. IFP and transferred.. that plaintiff opted to file.. in this district for the express purpose of avoiding the consequences of.. Schwab's injunction.. Lamberth's observation is quite accurate."*

Lamberth's order says (App.28): *"The court grants leave to file, grants IFP.. if plaintiff were successful in reopening the case in federal district court, he would also succeed in collaterally attacking the closed judgment of the case set forth at No.6137 of 2001.. Notwithstanding plaintiff's choice of venue,* he acknowledges *that WD of Pa. is the proper forum.."*

Reasons why Certiorari should be Granted

I. Review is warranted because 3rd Cir. has decided an important federal question- in approval of a *void* sanction rule made by a lower court to abridge or modify *pro se* citizen's 1st Amend. right of access into the courts on his claims existing and new causes, in conflict with the decisions of 8th & 6th Cir. and this Court- that should be settled by this Court.

I came seeking justice for what the Owners-GTE, the lawyers and state-judges did to me on a written contract in 1990-3; 2-decades passed, and I have yet to see justice with continued *injury* in the hands of US agents.

Because of my national origin the *un*righteous did not allow me present evidence on the merits of my claims and *violated* my constitutional rights. Despite *fraud* at arbitration, state-courts, and federal court (91-1815), they prohibited my access into the courts since 1993- discovery of significant *new*-evidence in 1994, 1997 & 2008 or *successor-in-interest* to the assets in 1996, under state law, made no difference.

Between 1992-2001, they made me a *non*-party and dismissed claims under a pretext- *lack* of 'attorney at law' per Simbraw, 367 F.2d 373 (3rd Cir. 1966). 3rd Cir. created Simbraw misusing Osborn, 22 US 738 or freely *twisting* justice Marshall's word *attorney**8 (App.43) into *attorney at law*- the rest, like Rowland, followed.

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*8 "Natural persons may appear in Court, either by themselves, or by their attorney. But no man has a right to appear as the attorney of another, without the authority of that other.. the authority must be produced,.. The case of an attorney at law,.. power must indeed exist, but its production has not been considered as indispensable."

3rd Cir. misused Simbraw to deprive my constitutional rights under the guise a *non* lawyer 'creates unusual burdens.. (on) the court.., lacks skills.., *ethical* responsibilities' of a lawyer (Jones, 722 F.2d 20)- see *ethics* of lawyers-judges here. 3rd Cir. did this for *2-decades* knowing I am the *sole* shareholder *of a defunct, dissolved* firm- financially *unable to hire an attorney* at law. In Cocivera, 104 F.3d 566: 3rd Cir. (Sloviter) said-

".. *in Holliday's Tax Services, Inc., 417 F.Supp. 182, aff'd, 614 F.2d 1287 (2nd Cir.), when the district court made a limited exception allowing a small closely-held corporation to be represented.. by its sole shareholder if the corporation was financially unable to hire an attorney, was cited in* Rowland *as among the* "aberrant" *cases..* Rowland, 506 US at 202 n.5."

In Moffatt, 807 F.2d 1169 (3rd Cir.)-

".. *court's refusal to permit the filing of an amended complaint generally implicates an abuse of discretion standard. See* Foman v. Davis, 371 US 178; Heyl, 663 F.2d 419.. *district judge fails to state why he denied the motion to amend..* erred *in ruling that the Moffatts' status as shareholders in the corporate plaintiff precluded their* separate *recovery.* Davis, 451 F.2d 659."

In Koster, 330 US 518 (cause of action which such a plaintiff brings.. is.. allowed in protection of its interest somewhat as a "next friend" might do for an individual, because it is disabled from protecting itself).

Pa. Supreme court in Radcliffe, 266 A.2d 698- said "as explained by Chief Justice Marshall in the opinion of Osborn, as quoted in the 3rd Cir. case of Simbraw- *in the instant case there was evidence that Hecht had authority to*

act. He and his two sisters were the only stockholders.. as we stated in Wood, 46 A.2d 321, *we may not justly disregard the interest or the right of the plaintiffs.. by the established practice of trial courts in* this State, *to have their cause tried even in the absence of.. attorney.* Neckes, 203 Pa. 13."

I reminded 3rd Cir. on relevant law- so, judges *misusing* state law 15 Pa.CS @1978(a), made *new*-law that:

. A *dissolved* firm exists to "*bring lawsuits only through licensed counsel.. our opinion on this which is dictated by controlling Supreme Court precedent and the law of this circuit, remains, and will continue to remain,* steadfast" (see appeal No.99-4022, Sloviter.. in *June 2000*- nearly *4½* years after my firm *dissolved* on 2/20/1996).
3rd Cir. added to it (in my related appeal) that-

. A "*dissolved corporation.. continues to survive beyond the.. period as to any timely filed action until all judgments have been executed*" (App.37).

Our Supreme Court or any court in the land made no such law to make Congress a "dead letter"- like 3rd Cir. did, and it is beyond *abuse*. Here, 15 Pa. CS @1979(a)(2) &(d) controls the limitations period, and the claims existing became my property on 2/20/1996. 3rd Cir. knew- (i) this Court ruling in Chicago Title & Trust, 302 US 120*9, and (ii) under FRCP 17(a) I am the real party in interest*9.

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*9 "How long and upon what terms a state-created corporation may continue to exist is a matter exclusively of state power... And it hardly will be claimed that the federal government may breathe life into a corporate entity thus put to death by the state...if the state attach qualifications to its...extinction, nothing can be added to or taken from these qualifications by the federal authority" (continued next page)

15 Pa. CS @1979(a): The dissolution of a business corporation... shall not eliminate nor impair any remedy available to... or its directors, officers or shareholders for any right or claim existing, ... prior to the dissolution, if an action or proceeding thereon is brought on behalf of:

(1) corporation within the time otherwise limited by law; or
(2) any other person before or within two years after the date of the dissolution..
(d) A shareholder of a dissolved corporation.., shall not be liable for any claim against the corporation on which an action is not commenced prior to the expiration of the period specified in subsection (a)(2).

Erdely, 875 A.2d 1078 (Pa. Super.) said:

"..the holder of.. matured or other unmatured claims, may bring a claim within the time limited by 15 Pa.CS 1979(a)(2) which is two years after the date of the dissolution.... when 15 Pa. CS @1979(a) is read as a whole, the unambiguous import is that the dissolution of a business corporation does not take away or impair any remedy given against the corporation, its directors, or its shareholders for any right or claim accrued or liability incurred prior to the dissolution, or in certain situations that accrues within two years thereafter, provided an action is brought thereon and *service had within two years after the date of dissolution."*

In Mt.Carmel Co., 89 A.2d 508: Pa. Supreme court (the legal title to *dissolved* corporate property pass to the *sole* stockholder).

In Defense Supplies Corp., 336 US 631 (Defense Supplies Corp. may after termination of its existence continue to prosecute an action pending at the time.. for a period.. (and) the Reconstruction Finance Corp. may be substituted as a party).

In Palazzolo, 121 S.Ct. 2448 (Court allowed *dissolved* corporate property pass on to the *sole* shareholder under the operation of state law, maintain the cause of action, and recover in his own name).

Finally, it seems 3rd Cir. recognized I am the *successor-in-interest* to the *assets* of the *dissolved* firm- Mikkilineni, 986 A.2d 185 (12/2009 Pa.Comnlth.court). So, invented a new-*Mantra* to *affirm* dismissal of my claims existing-on *2/19/2010* consolidated my 3-notices into one appeal (at No.09-2434) for "*all purposes*" (App.15)- but, on *May 12, 2010* (Sloviter..) entered 3-separate opinions (App.1, 6 & 11) with manufactured facts and law as usual. On the key issue of violation of my 1st Amend. right- see 3rd Cir. at (1), (2) & (3) and my response:

(1) "*Mikkilineni lost the opportunity to have review of the validity of the order barring him from filing any further civil actions without prior authorization when he failed to timely appeal the court's April 21, 2004 order*" (App.1).

3rd Cir. agreed I filed a *response* to Schwab's order- (filed within 28 days) a rule 60(b) motion since Schwab's order is a *fraud* or *void* as it claims *lack of subject matter jurisdiction* when, in fact, *diversity* of citizenship exists. See 3rd Cir. in Bumberger, 952 F.2d 764 (*subject-matter jurisdiction of the district court, based on diversity of citizenship under* 28 USC @1332(a)(1), *is a threshold issue.. court's subject-matter jurisdiction dependent partly on general principles of diversity jurisdiction. We have an independent duty to ascertain.. the subject-matter jurisdiction of the district court.* Pomper, 836 F.2d 131. *Such questions are not subject to waiver.* Shendock, 893 F.2d 1458.. *federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy.*" Lee, 446 US 458. *Nominal parties are generally those without a real interest in the*

litigation. Wolff, 768 F.2d 642).

On subject matter jurisdiction this Court in Steel Co. v. Citizens, 523 US 83, said "dismissal for lack of subject matter jurisdiction because of inadequacy of the federal claim is proper only when the claim is insubstantial, implausible, foreclosed by prior decisions of the Supreme Court, or otherwise completely devoid of merit as not to involve a federal controversy"

Here, my claims existing are not foreclosed by the Supreme Court or devoid of merit, and has diversity jurisdiction.

Schwab did not act on my *post*-decision *response*- so notice of appeal can wait- FRAP 4(a)(4)(A)*10. Thus, 3rd Cir. took control and abridged *forever* my 1st Amend. right of access into the federal courts under the pretext- I failed to file a notice of appeal on Schwab's *void* order. This *extreme* stand simply defies our constitution and laws and it is in direct conflict with 8th & 6th Cir. and this Court decisions below-

In Harrison, 780 F.2d 1422 (8th Cir.):

" *The complaint should not be dismissed if the factual allegations state a claim under any theory, even though not one advanced by the* plaintiff.. Supreme *Court has stated that "the right of access to the courts is indeed but one aspect of the right of petition"* California Motor Transport Co., 404 US 508 (citing Johnson, 393 US 483; Ex parte Hull, 312 US 546). *The Court has noted*

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*10 If a party timely files in the district court (a motion under FRCP 60(b)), the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.

that the right to petition is "among the most precious of the liberties safeguarded by the Bill of Rights*", United Mine Workers, 389 US 217, and that it has "a sanctity and a sanction not permitting dubious intrusions," Thomas, 323 US 516. As an aspect of the 1st Amend. right to petition, the right of access to the courts shares this "preferred place" in our hierarchy of constitutional freedoms and values. See Bounds, 430 US 817; Wolff, 418 US 539 (due process); Douglas, 372 US 353 (equal protection).*

In Graham, 804 F.2d 953 (6th Cir.):

"*It is beyond dispute that the right of access to the courts is a fundamental right protected by the Constitution. Supreme Court found several constitutional bases for this right.* Chambers, 207 US 142 (right of access is a privilege and immunity secured under article IV of the Constitution & 14th Amend.); California Motor Transp. Co., 404 US 508 (right of access is the right of petition of 1st Amend.); Wolff, 418 US 539 (right of access is founded in the Due Process Clause).. Cir. courts have found the right of access to the court to be protected by 1st Amend. Harrison, 780 F.2d 1422; Wilson, 593 F.2d 1375; McCray, 456 F.2d 315; Harris, 440 F.2d 315.

In Citizens United, 130 S.Ct. 876:

Supreme Court practice permits review of an issue not pressed below so long as it has been passed upon. For purposes of Supreme Court review, once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. Supreme Court has not hesitated to overrule decisions offensive to the First Amendment.

(2) "*Undeterred, on 7/19/2009, Mikkilineni filed a brand new.. action in USDC/DC against GTE..* GTE filed a response, asserting that Mikkilineni's new complaint had been filed in violation of the district court order enjoining him.. *Mikkilineni filed the instant complaint without seeking leave of court, the district court did not err in dismissing the complaint as having been filed in violation of a valid court order*" (App.11).

That's a complete *lie* and *fraud* upon the court- I filed the complaint in USDC/DC with leave from judge Lambreth; upon transfer, Schwab dismissed *sua sponte* before effecting service. GTE did not file a response- may be had a "*talk*" with judges like Sullivan-Gilmore did. See petition for writ No.10-395.

(3) "*Mikkilineni sought.. (to) file a complaint- by complying with the injunction and asking for permission from the district court in advance of pursuing the new action..* (but) based on the response filed by GTE, it plainly appears *that leave to file a new complaint properly was denied because Mikkilineni cannot meet this test.. he has a legitimate claim. The complaint he proposed to file.. is precisely the kind of harassing litigation the injunction properly was designed to prevent*" (App.6).

3rd Cir. cite- in its order (App.6 on p.3) starting "*GTE submitted a response, asserting..*" and order (App.1 on p.3) starting "*GTE responded to Mikkilineni's motion for reconsideration..*"- is a fraudulent use of GTE *void*-response. In App.1 on p.4 n.2, it says: "we *lack jurisdiction over district court's June 5, 2009 order denying Mikkilineni's motion for reconsideration because that motion was not timely..*"- if it is true, then, both GTE response and Schwab's order become *void* under 3rd Cir. ruling in Venen, 758 F.2d 117-

"..the motions set forth in rule 4(a)(4) are explicitly required to be served not later than ten days after entry of judgment and the district court lacked power to act on untimely (motions)"

Therefore, GTE *void*-response (filed on *6/08/2009*) cannot prove Schwab's denial of my complaint is proper- in fact, misuse of a *void*-pleading may amount to *fraud.*

On the issue "*Mikkilineni cannot meet this test..* (that) *he has a legitimate claim*"- 3rd Cir. freely uses GTE's quote that "*Mikkilineni has no concept of finality..*" (see App.6 on p.4)- but omits an important point GTE made in the same response (of *June 25*, 2009)- that GTE recognizes that "*a judgment is void and subject to collateral attack if the rendering court lacked jurisdiction..*" *Void* judgment is the key- see my complaint (App.56).

On the issue "*the complaint he proposed to file.. is precisely the kind of harassing litigation the injunction properly was designed to prevent*"- my complaint (App.56) described the wrongful-acts of GTE, its agents, state-agent & Bank in stealing my property doing *fraud.* 3rd Cir. judges call it a "*valid*" fraud and prohibits me from recovering stolen property.

In Edelman, 415 US at 687 (Virginia, 100 US at 346) this Court said- 14th Amend. addresses the state (not merely at state officers) that- "*no state shall make or enforce a law* (includes judicial) *which shall abridge the privileges or immunities of citizens of the US,... nor deny to any person within its jurisdiction the equal protection of the laws.*" In 1992, when I am 'within its jurisdiction' Pennsylvania enforced laws thru its judiciary (state courts in Westmoreland County and Indiana County) and denied '*equal protection of the laws*', and later in 1998, it did the same (in Cambria County). And, to this

date, its judiciary (local courts) continue to enforce laws abridging my privileges... Such wrongful conduct of state agents can *only* be stopped by an injunction by a federal court. See Quern, 440 US 332, where this court said- "*a federal court, consistent with 11th Amend., may enjoin state officials to conform their future conduct to the requirements of federal law, even though such an injunction may have an ancillary effect on the state treasury.*"

The state-agents can be defendants in my suit. See Idaho, 521 US 261, this court said- "*where relief is sought against individual state officer in a federal court based on federal right 11th Amendment in most cases is not a bar.*"

As stated 3rd Cir. decision in my case is in direct conflict with 8th & 6th Cir. and this Court decisions on making a rule to abridge or modify my 1st Amend. right of access into the courts- that poses an important federal question involving constitutional rights which this Court should settle.

II. Review is warranted because 3rd Cir. has decided an important federal question- in approval of a lower court to deprive *pro se* citizen's life, liberty or property without due process under 5th (7th, 14th) Amend. and deny filing an independent action on his claims existing or lost, in conflict with the decisions of 6th & DC Cir. and this Court under FRCP 60(b)(6)- that should be settled by this Court.

3rd Cir. entered 3-orders approving Schwab's injunction or rule that abridged my right of access into a court on my claims existing under the operation of state law and on new causes, and denied my rule 60(b)(6) motion to file an independent action. 3rd Cir. said:

(1) "*Mikkilineni's rule 60(b) motion to reopen the judgment was untimely, because it was filed almost five years after the challenged order was entered.. no extraordinary circumstances justifying relief under 60(b)(6).. are apparent from Mikkilineni's motion.. We conclude that this execution of a validly obtained state court judgment relating to Mikkilineni's history of vexatious litigation is not an extraordinary circumstance warranting reopening Mikkilineni's 2004 federal case*"

A *blind* can see or sense what Ziegler, Schwab & 3rd Cir. (Sloviter, Scirica, Alito & others) did to me during the past 2-decades: abridged my 1st Amend. right of access into the courts and prevented me from presenting evidence on my claims to a Jury. But, 3rd Cir. cannot see its own vexatious acts despite clear evidence in the record, and sided with the wrong-doers. See evidence, App.46-56.

3rd Cir. decision in my case is in direct conflict with 6th & DC Cir. and this Court decisions as below-

In Harris, 636 F.2d 572, DC Cir.- "..the interest that litigation must someday end was only slightly impinged, while the countervailing interest that justice be done was seriously at stake. The district court was well justified in deciding to give this case a strong second look.. under rule 60(b)(6).. When a party timely presents a .. fact so central to the litigation that it shows the initial judgment.. manifestly unjust, reconsideration under rule 60(b)(6) is proper.. See Gray, 574 F.2d 209; Compton, 608 F.2d at 107; Boughner, 572 F.2d at 978-9.

In Warfield, 267 F.3d at 542, 6th Cir. agreed that rule 60(b)- "..gives the courts discretion to set aside a voluntary dismissal with prejudice if the dismissal was not a 'free, calculated, and deliberate' choice"

In Salazar, 130 S.Ct. 1803- "court must never ignore significant changes in the law or circumstances underlying an injunction lest the decree be turned into an instrument of wrong. A court must find prospective relief that fits the remedy to the wrong or injury..."

In Klapprott, 335 US 601- The "other reason" clause.. vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.. Fair hearings are in accord with elemental concepts of justice, and the language of the "other reason" clause of 60 (b) is broad enough to authorize the Court to.. grant a fair hearing.."

In Beggerly, 118 S.Ct. at 1866-8: "..that independent actions under rule 60(b) is limited to cases of grave miscarriage of justice.. (citing Hazel-Atlas, 322 US 238). Independent action must, if rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence.. Such a case was Marshall, 141 US 589, in which the plaintiff alleged that judgment had been taken against her in the underlying action as a result of a forged document"

In Holland, 130 S.Ct. 2549: "A petitioner is entitled to equitable tolling if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.. Such extraordinary circumstances are not limited.. Courts must often exercise equity powers... on a case-by-case basis, demonstrating flexibility and avoiding mechanical rules, in order to relieve hardships.. arising from a hard and fast adherence to more absolute legal rules (citing Hazel-Atlas, 322 US 238)"

In Hazel-Atlas Glass, 322 US at 248-250: " Equitable relief against fraudulent judgments is not of statutory creation. It is judicially devised remedy.. to accord all the relief necessary to correct particular injustices.. the judgment therefore must be vacated.."

In Horne, 129 S.Ct. 2579: ".. courts must vigilantly enforce federal law and must not hesitate in awarding necessary relief. It takes an original judgment as a given and asks only whether a significant change in factual conditions or law renders continued enforcement of the judgment detrimental to the public interest. The rule permits relief from a judgment.. where applying it prospectively is no longer equitable.. once a party carries the burden (of showing the changed conditions), a court abuses its discretion when it refuses.."

In Steel, 106 US at 454: "..if a judgment has been obtained by means (of false and perjured testimony), the remedy of the aggrieved party is to apply for a new trial, or take an appeal to a higher court; and if the testimony was accompanied with acts which prevented him from presenting to the court the merits of his case, or by which the jurisdiction of the court was imposed upon, he may also institute some direct proceeding to reach the judgment"

In my case, I did all that- but, with this law in hand, Schwab abused power and fraudulently dismissed my suit(s) *sua sponte*; 3rd Cir. approved his abuse and wrongs with its own *fraud* despite this Court ruling in Christopher, 536 US 403- ".. any other remedies for the officials' alleged misconduct remained available.. *the basis of the constitutional right of access to courts, the right is ancillary* to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court.. It follows that the underlying cause of action,

whether anticipated or lost, is an element that must be described in the complaint, *just as much as allegations must describe the official acts frustrating the litigation..*"

I did that too for 2-decades: they gave me a title "*frequent filer*". Christopher court allowed plaintiff's tort claim to proceed to the merits because it is the underlying claim there. So under Christopher my existing claim, such as tort claim under 28 USC @1346(b), for injury caused by the *wrongful* acts, can proceed to the merits. I described my existing or lost claim- being shut out of court- in my complaint attached to my rule 60(b) motion for relief.

I did everything under the law, but 3rd Cir. has made decisions violating my constitutional rights in direct conflict with relevant decisions of this Court. Schwab's entry of sanction to prohibit me from *re*-filing my existing claim and 3rd Cir. approval of it has shielded Owners-GTE, state-US agents from liability for *fraud* upon the court in a *pro se* case. Therefore, 3rd Cir. decision is in direct conflict with 6th & DC Cir. and this Court decisions on the "other reason" clause of 60 (b), and poses an important federal question in this case involving constitutional rights- this Court should settle.

Conclusion

Why 3rd Cir. entered 3-orders after agreeing to consolidate into one appeal for "all purposes"- answer is simple- misuse GTE *void*-response in bits and pieces to make fiction sound good to a quick-reader, and not get caught in *fraud*. Who knows that better than a judge- knew the courts- no one will question a judge in a *pro se* case. So I only ask this Court to *'see if there is any merit'* in my case. The decision in Salazar makes sense-

"Congress, the Executive, and the Judiciary all have a duty to support and defend the Constitution.."

I wish that's true. My contacts with DC Law Schools did not help find a legal counsel, yet- may be because judge Alito*11 at 3rd Cir. and judge Roberts at DC Cir. are involved in my case(s). I hope to find a lawyer should this Court agree to review.

Respectfully,

M.R.Mikkilineni

PO Box 32110
Washington, DC 20007
(202 333 2115- message)
stmmr@starpower.net

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*11 Wrongful-acts at USDC/WD Pa. and 3rd Cir. (*Sloviter, Alito..*) is the root cause... See related Petition for Writ to 5th Cir. for wrongful acts at USDC/SD Tx. and 5th Cir., and the negligent acts at USDC/DC and DC Cir. (*Roberts..*). Therefore, it is only fair that *Mr.Alito & Mr.Roberts recuse* from my two Petitions because of prior negligent acts at 3rd & DC Cir. Whereas, others like *Mr.Scalia*- if had any talk with the judges at 5th or 3rd or DC Cir. in my case- should *recuse* for possible bias.

Appendix

In the United States Court of Appeals for the Third Circuit
No. 09-2434

M.R.Mikkilineni

v.
Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; Derry Township Municipal Authority; Indiana County Commissioners; Lindsay Mccabe & Lee; Zimmer Kunz; Commonwealth of Pennsylvania; United States

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On Appeal from the United States District Court for the Western District of Pennsylvania
(DC Civ. No.04-cv-00491)
District Judge: Honorable Arthur J. Schwab

Submitted Pursuant to Third Cir. LAR 34.1(a)
May 11, 2010
Before: Sloviter, Chagares and Weis, Cir. Judges

Judgment

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Cir. LAR 34.1(a) on May 11, 2010. On consideration whereof, it is now hereby

Ordered and Adjudged by this Court that the judgment of the District Court entered on April 13, 2009, be and the same is, hereby affirmed. All of the above in accordance with the Opinion of the Court.
Attest: Marcia M. Waldron, Clerk May 12, 2010

(Opinion filed: May 12, 2010) Not Precedential

Opinion

Per Curiam

Appellant M.R.Mikkilineni, who is well-known to this Court, initiated a pro se civil action in United States District Court for the District of Columbia against Gibson-Thomas Engineering Co (GTE) and two of its employees, Edward Schmitt and Mark Gera, among others. After the action was transferred to the Western District of Pennsylvania, the Disdrict Court dismissed the complaint *sua sponte* in an order on April 21, 2004. The court reasoned that Mikkilineni had previously been determined to have engaged in vexatious litigation against the named defendants, and that the instant complaint contained claims identical to those previously litigated.[1] The complaint was wholly insubstantial, frivolous, and completely devoid of merit, and thus the District Court dismissed it for lack of subject matter jurisdiction pursuant to FRCP 12(b)(1). *See Oneida Indian Nation of NY v. Oneida County, NY*, 414 US 661 (some federal questions are "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court"). The district Court directed the Clerk not to accept any other *pro se* complaints from Mikkilineni unless he obtained prior authorization from the court. Mikkilineni filed a response to the court's order but he did not file a notice of appeal.

Nothing further occurred in the case until April 9, 2009, when Mikkilineni filed a post-judgment motion in

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1 The District Court noted that Mikkilineni had filed over 100 cases in courts throughout the land

the district court titled "Motion to Strike void-order of 4/20/2004 under Rule 60(b)(4) & (6) and re-open causes of action by allowing an independent action under Rule 60(d)(1), (b)(2) & (b)(3)." Mikkilineni alleged fraud in several of his prior civil actions, and he alleged that he had newly discovered evidence. Specifically, he asserted that a bank account he held for a nonprofit at Bank of America had been attached improperly by GTE in July, 2008 to satisfy a judgment against him in the amount of $140,000. Mikkilineni complained that these funds did not belong to him, were pledged to his nonprofit, Eshwar Institute, and should not have been used to satisfy the judgment. Mikkilineni also asked the District Court to recuse. The district court without explanation denied the Rule 60(b) motion in an order entered on April 13, 2009.

On May 11, 2009, Mikkilineni filed a timely notice of appeal from the order of the district court, and an untimely motion for reconsideration, Rule 59(e), FRCP (providing prior to December 1, 2009 that motion be filed within 10 days of entry of judgment). With the motion for reconsideration Mikkilineni sought to amend his original complaint pursuant to Rule 15(c), FRCP, or supplement it, to add new causes of action and new defendants, including Bank of America and Gary Caruso of Westmoreland County Court, among others. Defendant GTE responded to Mikkilineni's motion for reconsideration, contending that Rule 60(b) motion was an impermissible attempt to circumvent the injunction barring Mikkilineni from filing any further civil actions in the Western District against GTE and its officers and employees without prior authorization from the court, and an impermissible collateral attack on a state court judgment obtained against Mikkilineni in the Westmoreland County Court. In an order entered on

June 5, 2009, the district court denied the motion for reconsideration, concluding that Mikkilineni could not resort to Rule 60(b) for the reasons given by the defendants in their response, and stating that the court would "not permit [Mikkilineni to circumvent its] directives by this flagrant maneuver". Mikkilineni did not separately appeal this order.

We will affirm the order denying Mikkilineni's Rule 60(b) motion. We have jurisdiction under 28 USC @1291[2] and may affirm a result reached by the district court for any reason as long as the record supports the judgment. *See Guthrie v. Lady Jane Collieries, Inc.*, 722 F.2d 1141, 1145 n.1 (3d Cir.). Mikkilineni's Rule 60(b) motion to reopen the judgment was untimely, because it was filed almost five years after the challenged order was entered. See Rule 60(c)(1)(A) ("A motion under Rule 60(b) must be made within a reasonable time- and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceedings"); *Moolenaar v. Gov't of Virgin Islands*, 822 F.2d 1342 (3d Cir.) (two years not "reasonable time" for 60(b) purposes); *Martinez-McBean v. Gov't of Virgin Islands*, 562 F.2d 908, 913 n.7 (3d Cir.) (expressing "serious doubts" that two-and-one-half years delay in

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2 We lack jurisdiction over the district court's June 5, 2009 order denying Mikkilineni's motion for reconsideration because that motion was not timely filed under FRCP 59(e). See FRAP 4(a)(4)(A)(iv), (vi) (effective until November 30, 2009). Although a motion seeking to amend a complaint made after a judgment of dismissal has been entered may be construed as a Rule 60(b) motion, *see Ahmed v. Dragovich*, 297 F.3d 201 (3d Cir.), construing Mikkilineni's motion for reconsideration as a second Rule 60(b) motion would not give us jurisdiction over the order denying it, because Mikkilineni did not file a notice of appeal from the district court's June 5, 2009 order.

filing Rule 60(b) motion would comply with "reasonable time" requirement). The district court thus properly denied the Rule 60(b) motion for this reason alone.

Furthermore, no extraordinary circumstances justifying relief under subparagraph (b)(6), the "catch all" provision of Rule 60, are apparent from Mikkilineni's motion. *See Moolenaar*, 822 F.2d 1342. We note specifically that Mikkilineni lost the opportunity to have review of the validity of the district court's order barring him from filing any further civil actions without prior authorization when he failed to timely appeal the court's April 21, 2004 order. Rule 60(b) may not be used to revive an issue that was lost as a result of a failure to comply with the mandatory jurisdictional requirements of FRAP 4(a)(1). *See Hall v. Community Mental Health Center of Beaver County*, 772 F.2d 42 (3d Cir.).

In addition, in its response to Mikkilineni's motion for reconsideration, GTE has explained that the state court judgment awarded to GTE in the amount of $115,390.83 at No.6137 of 2001 (Westmoreland County) is related to Mikkilineni's long history of vexatious litigation against GTE. The Pennsylvania Superior Court affirmed GTE's judgment, execution was achieved, and the judgment was satisfied. We conclude that this execution of a validly obtained state court judgment related to Mikkilineni's history of vexatious litigation is not an extraordinary circumstance warranting reopening Mikkilineni's 2004 federal case,[3]

We will affirm the order of the district court denying Mikkilineni's Rule 60(b) motion to strike the judgment.

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[3] Although Mikkilineni contended that he had pledged his money to his nonprofit, the account in which the money was placed at Bank of America was in his own name, which is why GTE was able to execute upon it and why the bank released the funds, according to GTE.

In the United States Court of Appeals for the Third Circuit
No. 09-2997

M.R.Mikkilineni

v.

Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; Derry Township Municipal Authority; Indiana County Commissioners; Lindsay Mccabe & Lee; Zimmer Kunz; Commonwealth of Pennsylvania; United States

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On Appeal from the United States District Court for the Western District of Pennsylvania
(DC Civ. No.o4-cv-00491)
District Judge: Honorable Arthur J. Schwab

Submitted Pursuant to Third Cir. LAR 34.1(a)
May 11, 2010
Before: Sloviter, Chagares and Weis, Cir. Judges

Judgment

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Cir. LAR 34.1(a) on May 11, 2010. On consideration whereof, it is now hereby

Ordered and Adjudged by this Court that the judgment of the District Court entered on June 26, 2009, be and the same is, hereby affirmed.

All of the above in accordance with the Opinion of the Court.

Attest: Marcia M. Waldron, Clerk May 12, 2010

(Opinion filed: May 12, 2010) Not Precedential

Opinion

Per Curiam

Appellant M.R.Mikkilineni initiated a pro se civil action in USDC for the DC against Gibson-Thomas Engineering Co (GTE) and two of its employees, Edward Schmitt and Mark Gera, among others. After the action was transferred to the Western District of Pennsylvania, the District Court dismissed it *sua sponte* in an order on April 21, 2004. The court reasoned that Mikkilineni had previously been determined to have engaged in vexatious litigation against the named defendants, and that the instant complaint contained claims identical to those previously litigated. The complaint was wholly insubstantial, frivolous, and completely devoid of merit, and thus the District Court dismissed it for lack of subject matter jurisdiction pursuant to FRCP 12(b)(1). *See Oneida Indian Nation of NY v. Oneida County, NY*, 414 US 661 (some federal questions are "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court"). The district Court directed the Clerk not to accept any other pro se complaints from Mikkilineni unless he obtained prior authorization from the court. Mikkilineni filed a response to the court's order but he did not file a notice of appeal.

On April 9, 2009, Mikkilineni filed a Rule 60(b) motion, which the district court denied in an order entered on April 13, 2009. On May 11, 2009, Mikkilineni filed a motion for reconsideration of that order, which

the district court also denied. Mikkilineni has separately appealed the April 13, 2009 order of the district court denying his Rule 60(b) motion at CA No.09-2434.

At issue in this appeal, following the June 5, 2009 denial of his motion for reconsideration, Mikkilineni filed an item in the district court, on June 23, 2009, titled "Plaintiff's Application for leave to file Complaint with new Causes of Action." Ironically, on it he noted that the application was related to DC Civ. No.04-00491, and the defendants named in the proposed complaint included, among others, GTE and its employees. Through this application, Mikkilineni sought to accomplish what he could not through his Rule 60(b) motion and motion for reconsideration- that is, file a complaint- by complying with the injunction and asking for permission from the district court in advance of pursuing the new action.

GTE submitted a response, asserting that Mikkilineni's application and proposed complaint did not involve new causes of action and was barred by the district court's April 21, 2004 order enjoining Mikkilineni from filing any further litigation of a harassing nature against GTE. Mikkilineni's application was impermissibly designed to collaterally attack a valid state court judgment related to his vexatious litigation. In sum, after years and years of enduring Mikkilineni's vexatious litigation in federal court, and incurring substantial legal fees defending those actions, GTE had filed an action in state court under the provisions of 42 Pa.CSA @8351 et seq. for Mikkilineni's wrongful use of civil proceedings. GTE had prevailed in that action and obtained a judgment against Mikkilineni in the amount of $115,390.83. At the conclusion of Mikkilineni's state court appeals, GTE obtained a writ of execution and Mikkilineni's Bank of America account then was garnished in the amount of $131,610.34, which included interest and costs.

GTE stated:

Mikkilineni has no concept of finality. The varies matters that he has incessantly filed against the defendants and others have no legal or factual basis as numerous courts have determined through the appropriate judicial processes. This court needs to look no further than Mikkilineni's own Exhibit 2 attached to his complaint as evidence of his handiwork. Exhibit 2 is a copy of the complaint filed by GTE in the matter at No.6137 of 2001. A review of the complaint, and specifically paragraph 13, shows the 21+ matters Mikkilineni has filed against the defendants since 1992. All 21 matters, replete with the same allegations of fraud, injustice, deprivation of rights and tortious injury inflicted upon Mikkilineni by various defendants that he sets forth in the instant case, have been dismissed over and over. (GTE Response, at 5).

In an order entered on June 26, 2009, the district court denied Mikkilineni's application for leave to file a complaint with new causes of action as an impermissible attempt to harass GTE and circumvent the court's previous rulings. Mikkilineni appeals.

We will affirm. We review the district court's order enforcing its injunction for an abuse of discretion, *Int'l Union, United Automobile, Aerospace and Agr. Implement Workers of America, UAW v. Mack Trucks, Inc.*, 820 F.2d 91 (3d Cir.). An "abuse of discretion exists where the district court's decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." Id. As a threshold matter, Mikkilineni lost the opportunity to have review of the validity of the district court's April 21, 2004 order barring him from filing any further civil actions without prior authorization when he failed to timely appeal it. Accordingly, we proceed on the basis that the injunction is valid and may be enforced.

District court in this circuit may issue an injunction to require vexatious litigants to obtain the approval of the court before filing further complaints. *Abdul-Akbar v. Watson*, 901 F.2d 329 (3d Cir.). Nevertheless, "access to the courts is a fundamental tenet of our judicial system; legitimate claims should receive a full and fair hearing no matter how litigious the plaintiff may be." *In re Oliver*, 682 F.2d 443 (3d Cir.). To protect a litigious litigant's legitimate claims, we have previously approved of an order "directing that the litigant not file any sec. 1983 claims without leave of court and that in seeking leave of court, the litigant certify (1) that the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal courts, (2) that he believes the facts alleged in his complaint to be true, and (3) that he knows of no reason to believe his claims are foreclosed by controlling law." *Abdul-Akbar*, 901 F.2d at 333. Based on the response filed by GTE, it plainly appears that leave to file a new complaint properly was denied because Mikkilineni cannot meet this test for establishing that he has a legitimate claim. The complaint he proposed to file against GTE, Bank of America, and the state court judge is precisely the kind of harassing litigation the injunction properly was designed to prevent.

We will affirm the order of the district court denying Mikkilineni's application for leave to file a complaint with "new causes of action."

In the United States Court of Appeals for the Third Circuit
No. 09-3542

M.R.Mikkilineni

v.

Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; Mcdonald, Snyder and Lightcap; John P. Merlo; Bank of America; Gary P. Caruso; Commonwealth of Pennsylvania

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On Appeal from the United States District Court for the Western District of Pennsylvania
(DC Civ. No.09-cv-01026)
District Judge: Honorable Arthur J. Schwab

Submitted Pursuant to Third Cir. LAR 34.1(a)
May 11, 2010
Before: Sloviter, Chagares and Weis, Cir. Judges

Judgment

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Cir. LAR 34.1(a) on May 11, 2010. On consideration whereof, it is now hereby

Ordered and Adjudged by this Court that the judgment of the District Court entered on August 17, 2009, be and the same is, hereby affirmed.

All of the above in accordance with the Opinion of the Court.

Attest: Marcia M. Waldron, Clerk May 12, 2010

(Opinion filed: May 12, 2010) Not Precedential

Opinion

Per Curiam

Appellant M.R.Mikkilineni initiated a pro se civil action in United States District Court for the District of Columbia against Gibson-Thomas Engineering Co (GTE) and two of its employees, Edward Schmitt and Mark Gera, among others. After the action was transferred to the Western District of Pennsylvania, the District Court dismissed the complaint *sua sponte* in an order on April 21, 2004. The court reasoned that Mikkilineni had previously been determined to have engaged in vexatious litigation against the named defendants, and that the instant complaint contained claims identical to those previously litigated.[1] The complaint was wholly insubstantial, frivolous, and completely devoid of merit, and thus the District Court dismissed it for lack of subject matter jurisdiction pursuant to FRCP 12(b)(1). See Oneida Indian Nation of NY v. Oneida County, NY, 414 US 661 (some federal questions are "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court"). The district Court directed the Clerk not to accept any other pro se complaints from Mikkilineni unless he obtained prior authorization from the court. Mikkilineni filed a response to the court's order but he did not file a notice of appeal.

On April 9, 2009, Mikkilineni filed a Rule 60(b) motion, which the district court denied in an order

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1 The District Court noted that Mikkilineni had filed over 100 cases in courts throughout the land

entered on April 13, 2009. On May 11, 2009, Mikkilineni filed a motion for reconsideration of that order, which the district court also denied. Mikkilineni has separately appealed the April 13, 2009 order of the district court denying his Rule 60(b) motion at CA No.09-2434. On June 23, 2009, Mikkilineni filed an application for leave to file a complaint with new causes of action and additional parties. After GTE filed a response asserting that the proposed action was related to Mikkilineni's history of vexatious litigation, the district court, in an order entered on June 26, 2009, denied the application as an impermissible attempt to harass GTE and circumvent the court's previous rulings. Mikkilineni has separately appealed the June 26, 2009 order of the district court, see CA No.09-2997.

Undeterred, on July 19, 2009, Mikkilineni filed a brand new civil rights action in USDC/DC against GTE and its employees, among others. Just as he had in his Rule 60(b) motion, motion for reconsideration, and application for leave to file a complaint with new causes of action, Mikkilineni asserted that a bank account he held for a nonprofit at Bank of America had been attached improperly by GTE in July, 2008 to satisfy a judgment against him in the amount of $140,000. Fearing that Mikkilineni was forum-shopping to avoid the Western District of Pennsylvania's jurisdiction, the district of Columbia transferred the action to the Western District of Pennsylvania.

GTE then filed a response, asserting that Mikkilineni's new complaint had been filed in violation of the district court's April 21, 2004 order enjoining him from filing any further litigation without prior authorization from the court. Construed as an application for leave to file a complaint, if was impermissibly designed to collaterally attack a valid state court judgment related to Mikkilineni's history of vexatious litigation.

In an order entered on August 17, 2009, the district court concluded that the complaint, which Mikkilineni originally filed in the District of Columbia, was a "blatant attempt" to circumvent the court's prior order enjoining him from filing any further complaints without prior authorization from the court. Accordingly, the district court dismissed the complaint and did not separately construe it as an application for leave to file a new complaint. Mikkilineni appeals.

We will affirm. We have jurisdiction under 28 USC @1291. Insofar as the district court previously enjoined Mikkilineni from filing any further complaints in the Western District of Pennsylvania unless he obtained prior authorization from the court, and Mikkilineni filed the instant complaint without seeking leave of court, the district court did not err in dismissing the complaint as having been filed in violation of a valid court order.

We will affirm the order of the district court dismissing the complaint as having been filed in violation the court's order enjoining Mikkilineni from filing any further complaints in the Western District of Pennsylvania without leave of court.

In the United States Court of Appeals for the Third Circuit

Nos. 09-2434, 09-2997, & 09-3542

Mikkilineni v. Gibson-Thomas Engineering Co.

To: Clerk

1) Motion by Appellant to Consolidate Case No.09-3542 with Nos.09-2434 and 09-2997

The foregoing motion is granted. The action are consolidated for all purposes. Appellant's consolidated brief and appendix must be filed within 30 days of the date of this order. No further extensions will be granted. If Petitioner retains counsel, however, additional time may be granted for good cause shown.

For the Court,

Marcia M. Waldron, Clerk
Dated: February 19, 2010

cc: M.R.Mikkilineni
Dara A. DeCourcy
Howard G. Hopkirk
Donald J. Snyder

In the United States District Court for the Western District of Pennsylvania

Notice of Electronic Filing
The following transaction was entered on 4/13/2009 at 1.01 pm and filed on 4/13/2009

Mikkilineni v. Gibson-Thomas Eng., et al
No.04-cv-491

Order denying (59) motion to strike (55) order, motion to reopen case. Signed by Judge Arthur J. Schwab on 4/13/09

In the United States District Court for the Western District of Pennsylvania

M.R.Mikkilineni

Filed 6/05/2009

v. 04-cv-491

Gibson-Thomas Engineering Co. et al.

Order of Court

Before the court is plaintiff M.R.Mikkilineni's "Motion to strike void-order of 4/20/2004 under Rule 60(b)(4) & (6) and re-open causes of action by allowing an independent action under Rule 60(d)(1), (b)(2) & (b)(3)" (doc. No.64) in which he seeks to "reopen" a case that has been closed for five years. As defendants GTE, Edward Schmitt, and Mark Gera accurately summarized in their response (doc. No.71):

This matter was dismissed with prejudice and closed by judge Schwab over five years ago on April 20, 2004. Contained in judge Schwab's order was a directive that stated that the clerk of court "shall not accept any pro se complaint or other initial pleadings from this plaintiff which names any of the defendants named herein as defendants or which is related in any way with his now defunct engineering Co, MRM Engineers, unless he has first presented an application for leave to file complaint or other initial pleadings with the attached and has obtained a court order permitting him to file same"... Clearly, a review of plaintiff's pleading shows that plaintiff is attempting to file a new (frivolous and unrelated) claim based on the action filed by GTE in the Westmoreland County court at No.6137 of 2001. However, due to the order set down by judge Schwab, the plaintiff is unable to do so at a new number and term, and therefore he is attempting to do so at the

instant number and term even though this matter has been closed for five years. Plaintiff is clearly attempting to circumvent judge Schwab's ruling, and continue on with his pattern of endless harassment of the defendants by attempting to reopen the instant matter and collaterally attacking the closed judgment of the case set forth at No.6137 of 2001 in the court of Common pleas of Westmoreland County. (Doc. No. 71 at 3-4)

This court will not permit plaintiff to circumvent this court's directives by this flagrant maneuver. Accordingly, plaintiff's "Motion to strike void-order of 4/20/2004 under Rule 60(b)(4) & (6) and reopen causes of action by allowing an independent action under Rule 60(d)(1), (b)(2) & (b)(3) (doc. No.64) is Denied.

So ordered this 5th day of June 2009
Arthur J. Schwab, J

In the United States District Court for the Western District of Pennsylvania

M.R.Mikkilineni

Filed 6/26/2009

v. 04-cv-491

Gibson-Thomas Engineering Co. et al.

Order of Court

Before the court is "Plaintiff's Application for Leave to File Complaint with New Causes of Action" (Doc. No. 77), to which defendant Gibson-Thomas Engineering Co. (GTE), Edward Schmitt, and Mark Gera have filed a response (doc. No. 70). For virtually the same reasons set forth in this court's order of June 5, 2009, denying plaintiff M.R.Mikkilineni's "Motion to Strike void-order of 4/20/2004 under rule 60(b)(4) & (6) and re-open causes of action by allowing an Independent Action under rule 60(d)(1), (b)(2) & (b)(3)" (doc. No. 64), plaintiff's latest attempt to harass defendants and to circumvent this court's previous rulings must be denied. Accordingly, "Plaintiff's Application for Leave to File Complaint with New Causes of Action" (Doc. No. 77) is hereby Denied.

It is further ordered that any future similar attempts will be screened and may be dealt with summarily by the court without ordering a response.

So ordered this 26th day of June 2009

Arthur J. Schwab, J

In the United States District Court for the Western District of Pennsylvania

The following transaction was entered on 8/10/2009 a 11.26 am and filed on 8/10/2009

Mikkilineni v. Gibson-Thomas Engineering Co. et al. No.09-cv-1026

Summons issued as to Gibson-Thomas Eng. Co., Edward Schmitt, Mark Gera, Mcdonald, Snyder and Lightcap, John P. Merlo, Bank of America, Gary P. Caruso, Commonwealth of Pennsylvania

In the United States District Court for the Western District of Pennsylvania

M.R.Mikkilineni

Filed 8/17/2009

v. 09-cv-1026

Gibson-Thomas Engineering Co. et al.

Order of Court

This case originated in the USDC/DC wherein the plaintiff M.R.Mikkilineni filed an application to proceed *IFP* and a *pro se* complaint. Plaintiff's complaint raises the same claims he has previously raised and re-raised, unsuccessfully, in this court and in an action in the Westmoreland County court, Pennsylvania at No.6137 of 2001. *See Mikkilineni v. Gibson-Thomas Eng. Co.* No.04-cv-491, 2009 WL 1598407, at 81 (WD Pa. June 5, 2009) ("This court will not permit plaintiff to circumvent this court's directives by this flagrant maneuver"). Chief district judge Royce C. Lamberth for the district of Columbia granted plaintiff leave to proceed *IFP* and transferred this action, *sua sponte*, to the USDC/WD pa., stating, *inter alia*, as follows: "of particular importance is the likelihood that plaintiff opted to file this action in this district for the express purpose of avoiding the consequences of judge Schwab's injunction order." See transfer order (Doc. No.5).

Inasmuch as the caption of the complaint filed in that court erroneously designed the court of filing as the USDC/WD Pa., and the contents of the complaint mirror those of his previously filed complaint in this court, district court judge Royce Lamberth's observation is quite accurate. As before, Mikkilineni's attempted end-run to the district of Columbia is a

blatant attempt to circumvent this court's prior order that the clerk of court "not accept any *pro se* complaint or other initial pleading from this plaintiff which names any of the defendants named (in that action) as defendants or which is related in any way with (plaintiff's) now defunct engineering Co" without first obtaining leave of court. *Mikkilineni*, 2009 WL 1598407, at *1. Accordingly,

Plaintiff's "Motion to assign this case for a fair hearing before a judge other than the biased Mr.Schwab" (Doc. No.8) is Denied.

It is further ordered that plaintiff's complaint at civil action no.09-1026 is dismissed *sua sponte*.

The clerk of court shall mark this case closed.

Arthur J. Schwab, J

In the United States District Court for the Western District of Pennsylvania

M.R.Mikkilineni

Filed 4/20/2004

v. 04-cv-0491

Gibson-Thomas Engineering Co. et al.

Order of Court

And, now, this 20th day of April, 2004, for the reasons set forth in the accompanying memorandum opinion, this case is hereby Dismissed with Prejudice.

It is further Ordered that the clerk of court shall mark this case closed, and shall not accept any *pro se* complaint or other initial pleadings from this plaintiff which names any of the defendants named herein as defendants or which is related in any way with his now-defunct engineering company, MRM Engineers, unless he has first presented an application for leave to file complaint or other initial pleading, with same attached, and has obtained a court order permitting him to file same.

So Ordered this 20th day of April, 2004

Arthur J. Schwab, J

Memorandum opinion

April 20, 2004

By Order of March 31, 2004, this case was transferred to this court from the USDC/DC (civil action No.02-1118 RMU, in that court's docket). That court reasoned, in part, that because the "Western District of Pennsylvania has already ruled multiple times on similar claims filed by this pro se plaintiff, transferring this action to that district best serves the interests of justice." Mem. Order, at 1.

As plaintiff's complaint makes clear, the claims raised

previously in this court, and resolved against this vexatious frequent filer, are not just similar, they are, in fact, fairly identical to the underlying claims previously litigated unsuccessfully in this court, and affirmed by the US court of appeals 3rd Cir. The most significant differences are that his complaint filed initially in the District of Columbia names the Attorney General of the US as a party, asking the court for a writ of mandamus to direct the Attorney General to investigate alleged civil rights violations by the members of the federal and Pennsylvania courts who have reviewed his various litigations (apparently in an attempt to create jurisdiction in a)presumably) more favorable (to him) forum), and identifying members of this court and the US court of appeals 3rd Cir. (without naming any jurist as a defendant) as having acted in bad faith and malice in failing to agree with him and rule in his favor.

A federal court may dismiss a plaintiff's complaint, *sua sponte*, for lack of subject matter jurisdiction pursuant to FRCP 12 (b)(1), when the allegations of the complaint are attenuated, insubstantial, frivolous, devoid of merit, and/or no longer open to discussion. *Hagans v. Lavine*, 415 US 528; *see also Steel Co. v. Citizens for a Better Environment*, 523 US 83. Thus, the court clearly has the inherent power to grant dismissal based on the legal insufficiency of a claim, and may exercise this power on its own initiative. *See Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir.) ("A federal court has the obligation to address a question of subject matter jurisdiction *sua sponte*"). See *Kehr Packages, Inc. v. fidelcor, Inc.*, 926 F.2d 1406 (3d Cir.) (dismissal is proper only when the claim clearly appears to be either immaterial and solely for the purpose of obtaining jurisdiction, or is wholly insubstantial and frivolous), *quoting Oneida Indian Nation v. County of Oneida*, 414 US 661 (some federal

questions are so "insubstantial, implausible, foreclosed by prior decisions of [the Supreme] court, or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the district court...").

Dismissal for lack of jurisdiction is not appropriate merely because the legal theory alleged is probably false, but only because the right claimed is 'so insubstantial, implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit as not to involve a federal controversy.' *Kulick v. Pocono Downs Racing Ass'n*, 816 F.2d 895 (3d Cir.), *quoting Oneida Indian Nation*, 414 US at 666.

This case presents the quintessential example of an insubstantial, implausible, foreclosed by prior decisions, or otherwise completely devoid of merit, case. As such, the court will *sua sponte* dismiss this case, with prejudice.

Additionally, Mikkilineni has filed, pro se, over one hundred cases in courts throughout the land, as a search of his name on westlaw or lexis quickly reveals. *See, e.g., Mikkilineni v. Gibson-Thomas Engineering Co., Inc.*, 281 F.3d 222 (3d Cir.) (Table), and *Mikkilineni v. Gibson-Thomas Engineering Co., Inc.*, 216 F.3d 1076 (3d Cir.) (Table). Plaintiff's lawsuits related to the underlying claims made herein are vexatious, abusive and groundless. More than one clerk of court has been ordered to refrain from accepting any further *pro se* complaints from Mikkilineni in the absence of a court order approving the filing, and the clerk of court for the Western District of Pennsylvania will now be directed to do the same. *See In re Lanzy Oliver*, 682 F.2d 443 (3d Cir.); *Weber v. Henderson*, 275 F.Supp.2d 516(ED Pa.); 28 USC @1651(a) (All Writs Act).

An appropriate order will be entered.

Arthur J. Schwab, J

In the United States Court of Appeals for the Third Circuit

No. 09-2434

M.R.Mikkilineni

v.

Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; Derry Township Municipal Authority; Indiana County Commissioners; Lindsay Mccabe & Lee; Zimmer Kunz; Commonwealth of Pennsylvania; United States

No. 09-2997

M.R.Mikkilineni

v.

Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; Derry Township Municipal Authority; Indiana County Commissioners; Lindsay McCabe & Lee; Zimmer Kunz; Commonwealth of Pennsylvania; United States

No. 09-3542

M.R.Mikkilineni

v.

Gibson-Thomas Engineering Co. Inc.; Edward Schmitt; Mark Gera; McDonald, Snyder and Lightcap; John P. Merlo; Bank of America; Gary P. Caruso; Commonwealth of Pennsylvania

Before: McKee, Chief Judge, Scirica, Barry, Ambro, Fuentes, Fisher, Chargares, Jordan, Greenaway, Jr.., Vanaskie and Weis,* Cir. Judges

Sur Petition for Panel Rehearing with suggestion for Rehearing *en banc*

The petition for rehearing filed by appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

Weis, J *As to Panel Rehearing Only
Dated July 13, 2010

cc: M.R.Mikkilineni
Dara A. DeCourcy
Howard G. Hopkirk
Donald J. Snyder

United States District Court for the District of Columbia

M.R.Mikkilineni

Filed Jul 16 2009

v. No.09-1320

Gibson-Thomas Engineering Co., et al.

Transfer Order

This matter comes before the court on consideration of plaintiff's "Application Pursuant to court order seeking leave to file", his application to proceed *IFP* and *pro se* complaint. This court grants leave to file, grants the IFP application, and transfers this action to the USDC/WD Pa.

It appears that defendant took funds from plaintiff's personal accounts at the Bank of America to enforce a default judgment obtained in the court of Common Pleas of Westmoreland County, Pennsylvania. *See* Compl. at 2; *see id.*, Ex. E2 (Bank of America's Garnishee's Answers to Interrogatories). It further appears that plaintiff attempted to pursue claims arising from the garnishment by filing a motion to reopen a "matter... dismissed with prejudice and closed... over five years ago on April 20, 2004" in the USDC/WD Pa. *Mikkilineni v. Gibson-Thomas Eng'g Co.*, No.04-cv-491, 2009 WL 1598407, at *1 (WD Pa. June 5, 2009); *see* Application Pursuant to Court order seeking leave to file at 2. Judge Schwab viewed plaintiff's efforts as an "attempt[] to file a new (frivolous and unrelated) claim based on the action filed by [Gibson-Thomas Engineering Co.] in the Westmoreland County court of Common Pleas at No.6137 of 2001," which violated the district court's prior order that its clerk "not accept any pro se complaint or other initial pleadings from this

plaintiff which names any of the defendants named [in that action] as defendants or which is related in any way with [plaintiff's] now defunct engineering company" without first obtaining leave of court. *Mikkilineni*, 2009 WL 1598407, at *1. If plaintiff were successful in reopening the case in federal district court, he would also succeed in "collaterally attacking the closed judgment of the case set forth at No.6137 of 2001 in the court of Common Pleas of Westmoreland County." *Id.*

Under 28 USC @1404(a), "a district court may transfer any civil action to any other district... where it might have been brought" if such a transfer is "[f]or the convenience of the parties and witnesses [and] in the interest of justice." *Id.* "Section 1404(a) reflects an increased desire to have federal civil suits tried in the federal system at the place called for in the particular case by consideration of convenience and justice." *Van Dusen v. Barrack*, 376 US 612. In considering whether transfer would be proper, the court considers the following factors:

The convenience of the witnesses of plaintiff and defendant; ease of access to sources of proof; availability of compulsory processes to compel the attendance of unwilling witnesses; the amount of expense for the willing witness; the relative congestion of the calendars of potential transferor and transferee courts; and other practical aspects of expeditiously and conveniently conducting a trial. *SEC v. Page Airways*, 464 F.Supp. 461 (DDC).

Notwithstanding plaintiff's choice of venue, he acknowledges that the Western District of Pennsylvania is the proper forum, Compl. At 1, as it is the district where plaintiff's cause of action arose, where the defendants are located, and where potential witnesses and sources of proof likely are found. Of particular importance is the likelihood that plaintiff opted to file

this action in this district for the express purpose of avoiding the consequences of judge Schwab's injunction order. A "transfer from the plaintiff's venue of choice serves the interest of justice when it would prevent a litigant from using one district as a safe haven from the lawful orders of another." *Mikkilineni v. Penn Nat'l Mut. Ins. Co.*, 271 F.Supp.2d 142 (DDC) (citation and internal quotation marks omitted); *In re Tripati*, 836 F.2d 1406 (DC Cir. (per curiam) (concluding that the district court did not abuse its discretion by transferring an incarcerated *pro se* plaintiff's case to the district of Arizona where he had filed so many civil actions that that court "ordered its clerk not to accept any complaint or petition from Tripati except pursuant to an order of a judge of the court").

Accordingly, it is hereby

Ordered that plaintiff's Application Pursuant to court order seeking leave to file is Granted; it is further

Ordered that plaintiff's application to proceed *IFP* is Granted; and it is further

Ordered that this civil action be Transferred to the USDC/WD Pa..

So ordered.

Royce C. Lamberth, J
Date 7/9/09

IRS on "non-profit" [relevant portions from record since 3rd Cir. Opinion (at App.3) makes reference to *"his non-profit"*]

US Dept. of the Treasury, Internal Revenue Service
PO Box 2508, Cincinnati, OH 45201
Date Mar 11, 2009

To, *Eshwar* Institute
1510 44th St. NW, Washington DC 20007

Dear Applicant:
We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under sec. 501(c)(3) of the Internal Revenue Code....
.....
Robert Choi, Director

(*Eshwar* Institute)
02/23/2009 By Certified US mail

To, Internal Revenue Service
.....
..... M.R.Mikkilineni, a retired engineer,.. is pursuing research in Astrophysics-Astronomy, on his own, from the point where newton left us 300-years ago.....
The organization has no list of activities that were conducted or currently conducting or plan to conduct. As regards to the future activities, nothing is currently planned, although, the organization as a private foundation shall help propagate knowledge of Science and educate people for justice (or *Dharma*) by conducting panel-discussions at seminars or symposia at

locations where local interest exist in a case or issue, and/or on Radio-TV-Internet from time to time.....

.....

The organization did not solicit funds from others, and has no plans to do so in the near future. A good part of M.R.Mikkilineni's own assets recoverable through the court(s) shall be assigned to the organization, and such funds should be sufficient to support any future activities in the near future.....

In the United States Court of Appeals for the Third Circuit
No. 00-2388

MRM Engineers PC; M.R.Mikkilineni

v.

Amwest Surety Insurance Co.; Maureen Hardy; WaterProducts; Derry Township Municipal Authority; Joe Yarchak; Gibson-Thomas Engineering Co.; Edward Schmitt; Glenn Elliott; David Pohland; Robert Mccabe,Jr.; Thomas Kutsie

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On Appeal from the United States District Court for the Western District of Pennsylvania
(DC Civ. No.95-cv-01103)
District Judge: Honorable Donald E. Ziegler

Submitted Pursuant to Third Cir. LAR 34.1(a)
April 17, 2001
Before: Scirica, Rendell and Fuentes, Cir. Judges
(Filed April 24, 2001)

Opinion

Per Curiam

MRM Engineers and appellant M.R.Mikkilineni filed suit, through counsel, in connection with a construction contract to install a sanitary sewer system for the Derry Township Municipal Authority and a general indemnity agreement with Amwest Surety Insurance Co. relating to the project for Derry Township. The complaint alleged discrimination on the basis of the national origin of MRM Engineer's owner and president, Mikkilineni,

who is Indian-American, and included a related common law claim of tortious interference with contractual relations. In an order entered on June 28, 1996, the district court dismissed all of Mikkilineni's claims, because those claims arose out of contracts between MRM Engineers and other corporate entities. In other words, Mikkilineni was not the real party in interest, see FRCP 17(a).

In an order entered on December 13, 1999, the Magistrate judge granted Amwest Surety Insurance Co.'s Rule 11 motion for sanctions and ordered counsel for MRM Engineers, Rupa Mikkilineni, Esq, to pay Amwest a sanction in the amount of $500. In an order entered on December 23, 1999, the district judge granted the motion for summary judgment of defendants Gibson-Thomas Engineering Co., Edward Schmitt, Derry Township Municipal Authority, Joe Yarchak, David Pohland, and Amwest Surety Insurance Co. This order disposed of all of the corporation's (MRM Engineers) claims against the defendants. In an order entered on July 28, 2000, the district court dismissed Gibson-Thomas Engineering Co.'s and Edward Schmitt's counterclaim against MRM Engineers. This order disposed of the last remaining claim in the case. In orders entered on July 14, 2000 and July 28, 2000, the district court dismissed the appeal from Magistrate judge's order sanctioning Rupa Mikkilineni. A notice of appeal signed by both Rupa Mikkilineni and M.R.Mikkilineni was filed on August 9, 2000, seeking review of the court's final orders and the award of sanctions.

Mikkilineni has filed a brief, signed only by him, challenging the award of summary judgment to the defendants, the court's determination that the corporation is the real party in interest, and the $500

sanction imposed against Rupa Mikkilineni, Esq. On October 24, 2000, our clerk of court, after giving notice, dismissed the appeal as to MRM Engineers under 3rd Cir. LAR Misc. 107.2 for failure to prosecute, because no attorney had entered an appearance on behalf of the corporation. Pursuant to Simbraw v. US, 376 F.2d 373 (3d Cir.) (per curiam), and Rowland v. California Men's Colony, Unit II Men's Advisory Counsel, 506 US 194, a corporation may proceed in federal court only through licensed counsel. Because the appeal has already been dismissed as to the corporation, we cannot review the district court's order granting summary judgment to defendants Gibson-Thomas Engineering Co., Edward Schmitt, Derry Township Municipal Authority, Joe Yarchak, David Pohland, and Amwest Surety Insurance Co. on the corporation's causes of action.

We also agree with the district court that all claims asserted in the complaint arose out of contracts between MRM Engineers and other corporate entities. In other words, we agree that Mikkilineni was not the real party in interest. See FRCP 17(a). Thus we will affirm the June 28, 1996 order dismissing Mikkilineni himself from the case.1

As to the award of sanctions against his attorney daughter, Mikkilineni neither has standing to appeal because he has no interest of his own to vindicate (he was not sanctioned), see generally, Wheeler v. Travelers Ins. Co., 22 F.3d 534 (3d Cir.), nor may he represent his attorney daughter because the right to proceed pro se is a personal right and does not extend to other adults, see generally Rowland, 506 US at 202 (citing 28 USC 1654). Although Ms.Mikkilineni signed the notice of appeal, she did not sign the brief. Therefore, we will dismiss the appeal from the award of sanctions pursuant to 3rd Cir. LAR Misc. 107.2 for failure to prosecute.

We will affirm the June 28, 1996 order of the district court finding that MRMEngineers is the real party in interest and dismiss the appeal as to Rupa Mikkilineni for failure to prosecute.

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1 We have previously determined that his corporation and not Mikkilineni himself was the real party in interest in a host of other appeals. See Mikkilineni v. Filippino, et al., CA 99-3721, Mikkilineni v. Gibson-Thomas Engineering Co., Inc., et al., CA 99-3621, Mikkilineni v. Indiana County Transit Authority, et al., CA 99-3633, Mikkilineni v. Amwest Surety Insurance Co., et al., CA 99-3618, Mikkilineni v. Gibson-Thomas Engineering Co., et al., CA 99-3620, Mikkilineni v. Borough of Forest Hills, et al., CA 99-3619; Mikkilineni v. Mallory, et al., CA 99-3388, Mikkilineni v. Gera, et al., CA 99-4022, and Mikkilineni v. Glenn Engineering & Asso. LTD., et al., CA 99-3631

In the United States Court of Appeals for the Third Circuit
No. 00-2847

M.R.Mikkilineni; Talasila Inc. (a dissolved Texas Corp.)

v.

Pittsburgh Water and Sewer Authority

On Appeal from the United States District Court for the Western District of Pennsylvania
(DC Civ. No.00-cv-01369)
District Judge: Honorable Donald E. Ziegler

Submitted Pursuant to Third Cir. LAR 34.1(a)
June 6, 2001
Before: Scirica, Rendell and Fuentes, Cir. Judges
(Filed June 11, 2001)

Opinion

Per Curiam

Appellant M.R.Mikkilineni, as the sole owner of Talasila, Inc., a dissolved Texas corporation as of August 4, 1997, filed a pro se action on July 14, 2000 against the Pittsburgh Water and Sewer Authority. The suit alleged breach of contract in connection with a contract between Talasila and the Authority to construct the Millvale pump station. Mikkilineni sought $84,000 in damages. Mikkilineni also filed a motion to have the case reassigned to a different district judge on the ground that the action was related to two other actions pending before that judge.

The Magistrate judge filed a Report and Recommendation, finding that Talasila was the real party in interest under FRCP 17(a). Pursuant to Simbraw v. US, 376 F.2d 373 (3d Cir.) (per curiam), and Rowland v. California Men's Colony, Unit II Men's Advisory Counsel, 506 US 194, a corporation may proceed in federal court only through licensed counsel. Moreover, Texas law provides that a dissolved corporation continues to exist for a period of three years after dissolution for the purpose of winding up its affairs, including prosecuting and defending actions in its name. This action was filed within three years of dissolution. She recommended dismissal of the action, and she further recommended denying the motion to have the case reassigned to a different district judge because the action was not related to the two actions pending before the other judge. In an order entered on September 14, 2000, the district court adopted the Report and Recommendation as the opinion of the court, dismissed the complaint for failure to prosecute, and denied the motion to have the case reassigned to a different judge.

We will affirm. The district court correctly held that Talasila, Inc. is the real party in interest under FRCP 17(a), and this so whether or not the corporation is dissolved. We agree, and have explained to Mikkilineni many times over the past year or so that corporations cannot be represented pro se. A corporation must be represented by a licensed attorney. We have applied Simbraw and Rowland in dismissing a host of other recent appeals by Mikkilineni involving another of his corporations, MRM Engineers. See Mikkilineni v. Filippino, et al., CA 99-3721, Mikkilineni v. Gibson-Thomas Engineering Co., Inc., et al., CA 99-3621, Mikkilineni v. Indiana County Transit Authority, et al., CA 99-3633, Mikkilineni v. Amwest Surety Insurance

Co., et al., CA 99-3618, Mikkilineni v. Gibson-Thomas Engineering Co., et al., CA 99-3620, Mikkilineni v. Borough of Forest Hills, et al., CA 99-3619; Mikkilineni v. Mallory, et al., CA 99-3388, Mikkilineni v. Gera, et al., CA 99-4022, and Mikkilineni v. Glenn Engineering & Asso. LTD., et al., CA 99-3631

Mikkilineni has argued in his brief that the Magistrate judge and district court failed to distinguish between a dissolved corporation and a merely incapacitated corporation under Texas law. However, the distinction between the two types of corporations is irrelevant. Moreover, Texas law does not support Mikkilineni's argument that he, and not Talasila, is the real party in interest under FRCP 17(a). Under Texas law, as explained by the Magistrate judge, Talasila had three years from the date of dissolution to pursue its breach of contract claim against the Pittsburgh Water and Sewer Authority. This action was filed within the three year period. Under Article 7.12(C) of the Texas Business Corporation Law, dissolved corporations like Talasila continue to survive beyond the three-year period as to any timely filed action until all judgments have been executed. Tex. Bus. Corp. Act. Art. 712(c). In short, Talasila survived beyond the filing date of this action. We note that, in Texas, as in the federal courts, corporations may appear and be represented only by a licensed attorney. See Dell Development Corp. v. Best Indus. Uniform Supply Co., Inc., 743 S.W.2d 302

Mikkilineni has also argued in his brief that the district judge to whom this case was assigned, and to whom numerous other of his cases have been assigned, has a "predictable Mantra: No counsel no case!" and that this entitles him to a different judge who might render a more favorable decision. Nothing could be further from the truth. In federal court, a party has no right to a judge of his or her choice. See 28 USC @137 ("The

business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court"). Sec. 137 vests in the district court broad discretion in assigning court business to individual judges. See US v. Diaz, 189 F.3d 1239 (10th Cir.), cert. denied, 529 US 1031. The statute even permits the district judge who heard this case to have all of Mikkilineni's cases assigned to him where such assignment promotes efficient operation of the district court. We are confident that it does. Accordingly, the district court did not abuse its discretion in denying Mikkilineni's request to have the case reassigned.

We will affirm the order of the district court dismissing the complaint for failure to prosecute and denying the motion for reassignment.

In the United States Court of Appeals for the Third Circuit
No. 99-3808

Mikkilineni v. Ogden D.C No.98-cv-1043

ORDER

It appearing that timely post-decision motions of a type specified by FRAP, are pending in the district court, it is hereby Ordered that the above-entitled appeal(s) is (are) stayed pending disposition of the motions....

It should be noted that appellate review of the district court's decision regarding the post-decision motions requires the party to file an amended notice of appeal within the time prescribed by Rule 4, FRAP measured from the entry of the order disposing of the last outstanding post-decision motion.

For the court,
P.Douglas Sisk, clerk
Date 11/22/1999

Constitutional and Statutory Provisions Involved

1. US Const. *Amendment* I:

"Congress (courts Congress...establish under *Art. III Sec.1*) make no law...abridging...the right...to petition the government for a redress of grievances."

2. US Const. *Amendment* V:

"No person shall be held to answer for a...infamous crime, unless on a presentment or indictment of a Grand Jury... nor deprived of life, liberty, or property, without due process of law..."

3. US Const. *Amendment VII*:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

4. US Const. *Amendment XIV*:

"...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

5. 28 USC @1346(b)(1)-United States as defendant:

"..the district courts...shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, ... for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Osborn v. Bank of US, 22 US 738 (Marshall)-
It is admitted that a corporation can only appear by attorney, and it is also admitted, that the attorney must receive the authority of the corporation to enable him to represent it. It is not admitted that this authority must be under seal. On the contrary, the principle decided in the cases of the Bank of Columbia v. Patterson, &c. is supposed to apply to this case, and to show that the seal may be dispensed with. It is, however, unnecessary to pursue this inquiry, since the real question is, whether the non-appearance of the power in the record be error, not whether the power was insufficient in itself.

Natural persons may appear in Court, either by themselves, or by their attorney. But no man has a right to appear as the attorney of another, without the authority of that other. In ordinary cases, the authority must be produced, because there is, in the nature of things, no prima facie evidence that one man is in fact the attorney of another. The case of an attorney at law, an attorney for the purpose of representing another in Court, and prosecuting or defending a suit in his name, is somewhat different. The power must indeed exist, but its production has not been considered as indispensable. Certain gentlemen, first licensed by government, are admitted by order of Court, to stand at the bar, with a general capacity to represent all the suitors in the Court. The appearance of any one of these gentlemen in a cause, has always been received as evidence of his authority; and no additional evidence, so far as we are informed, has ever been required. This practice, we believe, has existed from the first establishment of our Courts, and no departure from it has been made in those of any State, or of the Union.

The argument supposes some distinction, in this particular, between a natural person and a corporation; but the Court can perceive no reason for this distinction. A corporation, it is true, can appear only by attorney, while a natural person may appear for himself. But when he waives this privilege, and elects to appear by attorney, no reason is perceived why the same evidence should not be required, that the individual professing to represent him has authority to do so, which would be required if he were incapable of appearing in person. The universal and familiar practice, then, of permitting gentlemen of the profession to appear without producing a warrant of attorney, forms a rule, which is as applicable in reason to their appearance for a corporation, as for a natural person. Were it even otherwise, the practice is as uniform and as ancient, with regard to corporations, as to natural persons. No case has ever occurred, so far as we are informed, in which the production of a warrant of attorney has been supposed a necessary preliminary to the appearance of a corporation, either as plaintiff or defendant, by a gentleman admitted to the bar of the Court. The usage, then, is as full authority for the case of a corporation, as of an individual. If this usage ought to be altered, it should be a rule to operate prospectively, not by the reversal of a decree pronounced in conformity with the general course of the Court, in a case in which no doubt of the legality of the appearance had ever been suggested. In the statutes of jeofails and amendment, which respect this subject, the non-appearance of a warrant of attorney in the record, has generally been treated as matter of form; and the 32d section of the Judiciary Act may very well be construed to comprehend this formal defect in its general terms, in a case of law. No reason is

perceived why the Courts of Chancery should be more rigid in exacting the exhibition of a warrant of attorney than a Court of law, and, since the practice has, in fact, been the same in both Courts, an appellate Court ought, we think, to be governed in both by the same rule.

Rowland, 506 US 194 (1993) USSC-
It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel. Osborn, 22 US 738. As the courts have recognized, the rationale for that rule applies equally to all artificial entities. Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 USC @1654, providing that "parties may plead and conduct their own cases personally or by counsel," does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney. Simbraw, 367 F.2d 373 (3rd Cir. 1966) (corporation). Viewing @1915(d) against the background of this tradition, its assumption that litigants proceeding *in forma pauperis* may represent themselves tells us that Congress was thinking in terms of "persons" who could petition courts themselves and appear *pro se*, that is, of natural persons only.

*1 *Evidence* at case No.91-1815 (trial transcript May 11&12, 1992)

Amwest's McCabe- In the plans-specifications that went out for re-bid on Derry job, the moving of the sewer "*wasn't in the re-bid. The re-bid is exactly the same*" (as the original contract).
Judge- Are they the changed specifications that put out to get the re-bid:
McCabe- "*No, your Honor*"

My attorney- Exhibit 1E is necessary to understand what the re-bid contract was, 'they put out re-bid'
McCabe- "*That's not what we re-bid*"
My attorney- To understand, 'did the specifications that were bid meet those uncompleted construction', we have to understand what the completed construction was-
McCabe- "*No, we don't*"

McCabe presented GTE's "*file copy*" (or Xerox copy of) plans "*used by the re-bid*" and "*overlaid*" marked in red as "*as-built*" drawings (all code words to *confuse* my lawyer and others, except judge who is in McCabe's corner)

McCabe's witness Schmitt testified-
"*This is our file copy of where the differences occur from what was originally designed or, in this case, given to the.. for the re-bid, and then marked in the red as to any changes that were measured in the field later on*" (no reason given why red marked "*changes*" if what was originally-designed is given for *re*-bid, unless *re*-bid is a fraud- see McCabe witness Rotonda's testimony below)

Rotonda on whether the plans-specifications used in the re-bid differ from the original contract- "*No. They were exactly the same...*(as the original contract)... *during the*

pre-bid conference and the job site visit, the engineer explained the changes to the bidders"
Rotonda on re-bid schedule prepared based on the pipe having moved from one side of the alley to another- "*That's correct. The number of manholes on the original job* vs. *what was installed* vs. *what is on our bid schedule, the number is greater*"

Rotonda also testified at a deposition on 2/11/1992 where McCabe was present- At the pre-bid conference "*field changes were being discussed by the project engineer, GTE* (Schmitt), *and.. bidders were taking notes. The field changes were at least one additional manhole, line was moved to the opposite side of the alleyway, waterline that crossed and rock encounters...The changes were already incorporated into the bid schedule. The oral part of it was just a running description* (by the engineer as to how the job differed from the original) *correct.*"

McCabe- "*That's correct*" the re-bid contract at $137,850 plus the materials that are on the site (paid for by the original contractor ~$31,800, makes a total ~$169,650)

McCabe represented to the judge "*What took place here was that there was a change that was contemplated that* (the original contractor) *wanted* $140,000" (so, price at $169,650 is less than $140,000).

"4 *Evidence* at case Nos.92-1489 & 95-1103 (1994-7):

Derry- Yarchak, Pohland, GTE- Schmitt, Gera *scheme* to stop payments, terminate, and get the "*change that was contemplated*" done by *re*-bid using my assets of more than $169,650.

GTE-Schmitt on October 13, 1997, testified-
"*We had a question on line relocation through an alley, asking him for a price for... the relocation. And, it was really an extremely large sum of money for what we felt was a minimal amount of work.. I believe we had an arbitration clause. But, the number .. was so great... around* $140,000 . *When we had that size of difference in a change condition, to put my client in a position where he would have to deal with multiples.., that was a situation that I don't think was worth putting my client into that situation. I had to make a call on that.*"

Ralph Smith, a sub-contractor (Derry) in 1994 testified-
GTE's Gera referred Mikkilineni, individual, with racial slurs in a derogatory manner- used words such as- "*black fucking nigger*"; and

GTE's Mott constantly referred Mikkilineni as a "*black fucking nigger*".

Ed Cunnings, a sub-contractor (Transit) in 1994 testified-
GTE's Schmitt and Transit director Elkin & others called Mikkilineni a "*crazy Indian*", "*Iraqi*", "*middle easterner*", etc.
GTE-Schmitt admitted to using the term "*crazy Indian*" once or twice referring to Mikkilineni.. in a job conference because-
"*..during Iraqi war when we were being made aware of contract scenarios that we had to deal with* ...(Mikkilineni and any reference that may have been made to as).. *a*

'middle Easterner' (had no application...),... *and any description of him at the pre-bid meeting would have been objective reference as a defaulting contractor"*

GTE-Schmitt testified (on May 11, 1994)-
" Mikkilineni was bidding against some of these contractors... They were asking me if I know of Mikkilineni. And, it's a pretty close knit organization relative to me and my clients.. on.. three.. contracts, there was a subsequent bid where Mikkilineni, I believe, was again low and was not able to make the bid bond... I believe he didn't even submit a bid bond. They asked me, do you know this Mikkilineni. He was a low bidder... I believe so... it would be within the time frame relative to that" after 1992 . KLH-Soster.. was aware that I'd been involved in this situation with termination of a contractor.. yes, sir" Soster did not bring up Mikkilineni, I brought up...That's correct.. termination on two jobs.. third job arbitration... yes, sir" Soster reviews bids by Mikkilineni [This testimony of Schmitt makes it clear I could not secure new business in Pittsburgh area despite being a low bidder due to loss of Surety credit as a result of termination by Derry (Transit...); defendants drove my legitim[illegible]siness, out of business].

GTE-Schmitt admittedly kept giving unsolicited *'bad-*reference' on my work and about me until *'after 1992'*. In fact, 'Schmitt, Gera and Soster' conspired against me, with meeting of mind, at least until *July 1995* and interfered in the *making* of a contract (under @ 1981) with Cranberry TWP, Pa. See evidence on GTE-Gera-Schmitt *"scheme"* of Racketeering on Derry tapes below-

GTE-Gera, testified (in 1994) *he* had no knowledge or involvement on MRM Engineer's contracts; but,

evidence on the tapes disclosed in October 1997 reveals as below [relevant portions of Derry tapes are part of the court-record...]:

GTE-Gera-
On Unity job- "*.. it's still not done...we are still holding money..*"
On Derry job-
"*..that alley looks like the Ho Chi Mien Trail,.. I mean, it's pathetic.. You, as a board, have two options: you can try and work with him... or you can go the whole nine yards.. We wrote.. letter.. notifying them* (Amwest) *he (is) in technical default.. Now, you do have liquidated damages, you could invoke those.. so, you know, this we felt was a step that had to be taken. And, we, as your engineers, did this and there is no prejudice to the board..; the thing that is going to happen.. you are going to be with the bonding Co. either to completion of restoration, or in the liquidated damages...This guy* (Mikkilineni) *hasn't been responsible, we can shut him off in the future, and have good justifiable reasons.*"

GTE-Schmitt-
..there is no fault in the quality of work (done by him.. (but, Mikkilineni) *will never work in this neck of the woods..* [GTE- Gera, Schmitt and the *clan* did exactly that during the past 2-decades]

GTE-Schmitt-
..one of the things I am concerned about as far as making payment to this guy (Mikkilineni) is... we have been notified by him that there were a number of claims (against us).. That there is always the possibility of default or liquidated damages (against him).. One of the problems that you have with the Bonding Co., many times is, they say- why did you pay this guy so much money.. He did drop me off a copy of this letter (which

says he) has not received payments for the work performed.. To keep ourselves out of trouble, let us have it (a meeting).. to make a decision, whether or not we release (money to him) relative to the discussions with the Bonding Co... We already notified Pa. Dept. of Labor on him on all 3-jobs... that was verbal notification ... (and) I will do that (in writing)...

One voice- "*..what to do with the other two checks that I have in the drawer..*"
Another voice- "*..hold them.. and tell* (him) *we are holding the checks because you have not paid.. the material man... that way we are not setting ourselves up..*"
[Under the "*scheme*" Derry-Transit-Commissioners & GTE with-held monies owed to me by filing *willful* false-reports to Pa. Dol, and Amwest; and, later, utilized my assets (money and materials on site) for its own benefit]

*5 *My claims existing*
Claim @1981
Under Patterson, 491 US at 177-8, "*...it expressly prohibits discrimination* only *in the* making *and* enforcement *of contracts*... making applied *only* to the *formation* of contracts... (and) enforcement (is the) *conduct by an employer* which *impairs* an ability to enforce through legal process the established *contract rights*".

Claim against-
GTE-Gera, Schmitt: The facts on Derry tapes and testimony*3-4 in the record show *discrimination* against Mikkilineni, and interference in *making* of a contract with Indiana Commissioners in December 1990, and with Cranberry TWP, Pa. in July 1995.
McCabe, Zimmer Kunz: See *Evidence* Nos.91-1815 & 95-1103 Derry-Yarchak, Pohland, Taylor: See the facts on Derry *tapes* and *Evidence**4. *Denial* of existence of a right in the contract to arbitrate, taking all actions to resist petition to compel arbitration, and securing state-court order in May 1993 to stop arbitration is the *conduct* which *impaired* ability to enforce through legal process the established *contract rights*. Although on September 16, 1997, Pohland testified- "*I think this one has the newer version of the arbitration clause*", and on October 13, 1997, Schmitt testified- "*I believe we had an arbitration clause*"; but, Derry-GTE did not rescind the state-court order.
GTE- Gera, Schmitt; Transit- Blair, Elkins, Merlo: See the facts*4 at No.93-1653 and the *conduct* which *impaired* ability to enforce through legal process the established *contract rights*.
The cause of action @1981 is commenced *within the time* against the defendants at Nos.91-1815, 92-1489, 93-1653, 94-78 & 94-354 and 97-2311; the claim-existing

under 15 Pa.CS @1979(a) is re-filed in my own name as the *successor in interest* to the *dissolved* firm at Nos.95-1103, 96-526, 96-527 & 99-224. *Pa. saving statute*, 42 Pa.CS @ 5535: Permits my claims to survive because the '*first* federal action *tolled* statute of limitations on actions subsequently brought in the federal court', similarly the *first* state action *tolls* statute of limitations on actions subsequently brought in the state court.

Claim @1983

In a claim for denial of due process with respect to a contract, one must allege- '*the contract includes a provision that the state entity can terminate the contract only for cause, and that it is a protected property right for the purposes of @ 1983*'. The constitutional violation actionable under @ 1983 is not complete unless and until the '*state fails to provide due process*'.

Claim against-

Derry- Pohland, Yarchak, Taylor; GTE- Gera, Schmitt; Transit- Blair, Elkins, Merlo; Commissioners: The contracts include a provision that the state entity can terminate the contract only for cause; therefore, it is a protected property right for the purpose of @ 1983. Derry's procedures related to the breach of contract failed to provide due process when it denied existence of an arbitration provision in the contract, and secured a state-court order in May 1993 to stop arbitration; thereafter it did not rescind that order. Transit's procedures failed to provide due process when it denied jurisdiction-venue in Westmoreland County, Pa. and secured orders in Indiana County, Pa. where jurisdiction-venue did not exist. Commissioners failed to provide due process when it denied jurisdiction-venue in Westmoreland County, Pa. to obtain order for refund of assets withheld since Jan. 1991.

The cause of action @ 1983 is commenced *within the time* against the defendants initially at No.92-1489, and the claim-existing under 15 Pa.CS @1979(a) is pursued in my own name as the *successor in interest* to the *dissolved* corporation.

Claim @1985

Claim against-
Schmitt, Pohland, Yarchak admittedly*3-4 conspired with Ralph Smith, Pa.Dol agents, Water products' Kutsie & Marion Center's Elliott, and Amwest-Hardy, Rotonda, McCabe and others...
The cause of action @1985 against Schmitt, Gera is commenced *within the time* initially (at No.92-1489); against Pohland, McCabe, Yarchak (at No.94-78 & 94-354). The claim-existing under 15 Pa.CS @1979(a) is pursued in my own name as the *successor in interest* to the *dissolved* corporation.

Claim @civil RICO

Claim against-
GTE- Gera, Schmitt: Civil RICO actions are subject to the *4-year* limitations period which begins to run when plaintiff knows or should know of the injury.
The evidence in the court-record makes it clear the *breach* of contract (or default) by Derry, Transit and Commissioners is known in December 1990 to May 1991. So, the arbitration under the provisions of the contract pursued until April 1992 (on Transit), and until August 1993 (on Commissioners). In June 1992, commenced an action (at No.92-1489) against GTE-Schmitt, Gera, Derry-Taylor, Transit- Elkin, Blair & Commissioners et. al. based on Derry's *denial* of

arbitration, and limited evidence discovered until May 1992 (at case No.91-1815 and at the arbitrations). Later, in October 1997, Derry disclosed the meeting tapes that revealed a "*scheme*" of Racketeering by GTE-Schmitt, Gera; until that time, Mikkilineni did not know of the injury that underlies a civil RICO cause of action. On February 10, 1999 or within 16-months after knowing injury under civil RICO cause of action, Mikkilineni timely commenced that claim against GTE-Schmitt, Gera (at No.99-224). At No.95-1103, in June 1996 dismissed Mikkilineni as a party and in March 1998 did not allow to join with an amendment, nor allow a RICO claim by *sanctioning* my only legal-counsel to *scare* her away.

Tortious Interference

This claim is initially commenced in June 1992 (at No.92-1489); in Jan. 1994 (at No.94-78) and *re*-filed in March 1994 (at No.94-354); and in Oct. 1993 (at No.93-1653)- all within 2-years after discovery of evidence in May 1992 (at No.91-1815) and in April 1992 at arbitration. Therefore, subsequent *re*-filing in Feb. 1999 (at No.99-224) on the claim-existing under 15 Pa.CS @ 1979(a), is timely as the statute of limitation period *tolled*.

Fraud

This claim is initially commenced in Jan. 1994 (at No.94-78) and *re*-filed in March 1994 (at No.94-354), within 2-years after discovery of evidence of *fraud* in May 1992 (at the trial of No.91-1815), and in April 1992 at arbitration. Therefore, my subsequent *re*-filing in Feb. 1999 (at No.99-224), on the claim existing under 15 Pa.CS @ 1979(a), is timely as the statute of limitation period *tolled*.

Evidence at suit No.09-1026 (2008)__

In October 2001, GTE- Schmitt, Snyder commenced a claim for attorney fees against me and my *dissolved* firm in the court of Westmoreland County, Pa., (at No.6137 of 2001) alleging I (as a non-party) and my firm (*dissolved* on 2/20/1996) filed claims in the federal court without *probable* cause.

GTE-Schmitt, Snyder *verified* relevant-facts as: "Mikkilineni is.. *residing* in Ingomar, Allegheny County, Pa.. the corporate defendant conducted business from Ingomar, Pa.,... and believed to have been *dissolved*..

USDC/WD Pa. (& 3rd Cir.) terminated prior actions instituted for "*failure of the corporation to proceed with legal counsel..*"

Under 15 Pa.CS 1979(a)(2) & (d), a statute of repose, GTE's claims, if any, *abolished* for failure to commence within 2-years after *dissolution* of my firm on *2/20/1996*. See *Erdely*, 875 A.2d 1078 (2005) Pa. Super. said:

"*..the holder of.. matured or other unmatured claims, may bring a claim within the time limited by 15 Pa.CS 1979(a)(2) which is two years after the date of the dissolution.... when 15 Pa. CS @1979(a) is read as a whole, the unambiguous import is that the dissolution of a business corporation does not take away or impair any remedy given against the corporation, its directors, or its shareholders for any right or claim accrued or liability incurred prior to the dissolution, or in certain situations that accrues within two years thereafter, provided an action is brought thereon* and *service had within two years after the date of dissolution.*"

The state court record show no evidence that I or the *dissolved* entity is *ever* effectuated with service in Ingomar, Allegheny County, Pa., under Pa. RCP rule 400(a)- "*original process shall be served within the Commonwealth only by the sheriff*".
Service could not be made effective upon a *dissolved* entity or an individual officer after 2-years from the date of dissolution or after *2/20/1998*, in this case, under 15 Pa.CS @1979(a)(2) & (d). Under Pa. RCP 2179(a), an action against an existing corporation be bought only in Allegheny County, Pa., where it "*conduct(ed) business from Ingomar, Pa.*"

In January 2006, state-agent Caruso entered a *default*-verdict against me and my *dissolved* entity for $116,000., after *quashing* subpoenas and not allowing my witnesses to testify on the issue- whether my claim existing under 15 Pa.CS 1979(a) and/or 3rd Cir. ruling in my related appeal (No.00-2847) where in *June 2001* that court said "*dissolved corporations.. continue to survive beyond the.. period as to any timely filed action until all judgments have been executed*" (App.37).

Caruso quashed subpoenas with the knowledge that the private-citizen witnesses Schwab, Sensenich (of USDC), Cappy (of Pa. SC), and Del Sole (of Pa. Super.) *prejudiced* my case by *misrepresenting* that the subpoena issued "*do not contain the seal of the Court as required by Pa.RCP 234.2(a)*".

On *7/18/05*, I completed blank-spaces on the subpoenas, hand-written with my *fingerprints*, and served the subpoenas signed by Prothonotary, with *seal of the court*, upon the individual-witnesses to testify at the trial in the state-court. The subpoenas are issued properly, reasonably, and served for the purpose of seeking relevant testimony from the witnesses.

Upon appeal, Commonwealth Court (at No.1358 CD 2006) in *February 2007*-

Quashed my appeal, with *bias* (citing Schwab's words that I "*..filed over 100 complaints in courts throughout the country*") and claimed "*a single appeal is incapable of bringing on for review more than one final order..*" It handed-out *immunity* to Schwab, Sensenich (& the lawyers) despite admission of Schwab, Sensenich (thru attorney) that- '*misrepresentation that the subpoenas issued did not properly contain the seal of the court as required by* Pa.RCP 234.2(a)' is '*merely averments.. not sworn to under penalty of perjury..*'

Upon appeal of Caruso's *default*-verdict, Pa. Superior court (at No.805WDA2006) affirmed the *default*-order in *January 2007* and said- "*To the extent that we do not address an issue, we do so because it is waived..* we would affirm based on the 'reasoning set forth' in the trial court's opinion..."

Caruso's "*reasoning*" that "*it is clear that no genuine issue of material fact exists as to whether MRM instituted the federal proceedings without probable cause*" is based on Ziegler, Schwab orders. Caruso even cited Schwab's words that "*the claims raised previously in this court, and resolved against this vexatious frequent filer, are not just similar, they are, in fact fairly identical to the underlying claims previously litigated unsuccessfully in this court, and affirmed by the 3rd Cir.*"

The "*waiver*" is the pretext to *bypass* the issue of GTE's *invalid* service and *abolished* claim because state-actors knew the 2-year limitation will not *toll* under 15 Pa.CS 1979(a)&(d), a statute of repose. *Erdely*, 875 A.2d 1078.

So, decided to '*waive*' my right to *liberty* or *property* without due process of law under 14th Amend.

In my another *old*-claim (of 1995) judge O'Reilly of state-court in Pittsburgh, Pa. (at No.99GD 06661) allowed me to prosecute and present evidence at a trial in 2006-7; and entered a judgment in my favor for $306,000. In *March 2008*, I pledged that award-amount (less expenses) to *Eshwar* Institute, a non-profit Org. under formation. After receiving the check, I placed that amount in an account with Bank of America, Washington, DC.

Without service of *writ* at any time upon me under Pa.RCP 3140(c), for the first time on *July 24, 2008*, GTE- Snyder and Bank of America notified me that certain amount (~$135,000) from my bank account changed hands from the Bank to GTE. No one disclosed me the exact amount, but my estimate shows a loss of $140,000 from the account.

The Bank's failure in its duty to defend me under Pa.RCP @3141(a) has denied my right for a *new* trial on Caruso's *void*-judgment. Bank is grossly neglectful of its duty it owed to me, by permitting an entry of an order by clerk of Chester County, Pa., without service of *writ*, knowing the case is under review in Westmoreland County, Pa., by Caruso because *his default*-verdict is *void* under Pa. Supreme Court rulings. See Sharp, 221 A.2d 185-

"The rules relating to service of process must be strictly followed and jurisdiction of the court over the person of the defendant is dependent upon proper service having been made. There is no presumption as to the validity of the service and the return itself is required to set forth service in conformity with the rules."

In M&P Management, 937 A.2d 398 (November 2007)-

In the absence of jurisdiction, the court reversed judgment and remanded a case *for a determination of the status of the confessed judgment underlying the dispute.* The issue is similar in my case (at No.6137 of 2001)- *'the status of* GTE's *claim as of October 2001, under 15 Pa.CS 1979'*- because GTE's claim was *abolished* and Caruso has no subject matter jurisdiction in the matter. Caruso refused to reconsider the *default*-judgment, knowing GTE had no claim and the state-court had no jurisdiction in the matter; and, that *default*-judgment was *void.* A *void* judgment must be *stricken* when bought to court's attention, and there is no time limit. See Pa. Supreme court ruling-

"A void judgment is one that the court does not have the power to enter. It cannot become valid through the lapse of time. Penland v. Ashe, 19 A.2d 464 (It is certainly true that a void judgment may be regarded as no judgment at all; and every judgment is void, which clearly appears on its own face to have been pronounced by a court having no jurisdiction or authority in the subject matter). *A void judgment is one that the court does not have the power to enter. It cannot become valid through the lapse of time. Although providing finality to judgments is a worthy goal, ... an appellate court cannot provide finality to a judgment when a court lacked subject matter jurisdiction over the underlying dispute. Void judgments are to be treated in the same way that they were treated at common law, i.e., at any time that a void judgment is brought to the attention of the court, it must be stricken".*

Garnishee Bank's failure in its duty to defend me under Pa.RCP @3141(a) denied my right to due process and a

new-trial on Caruso's *void*-judgment. See Ogle, 92 A. 1071: Pa. Supreme Court said

"A right and duty of a garnishee exists to raise a question, as to the liability of the funds in its hands... A garnishee must, in good faith to an owner, contest every inch of ground, or he will not be discharged from liability for a debt..").

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On *March 2, 2009* (& Jan. 16, 2009), after GTE- Snyder took the money from my account, Caruso denied my motion(s) using *waiver* of my rights by Pa. Super. court as a cover- although a *void*-judgment must be stricken when bought to *his* attention, and there is no time-limit to do that.

On March 11, 2009, IRS issued a tax-exempt status to *Eshwar* Institute, a non-profit Org. (App.31).